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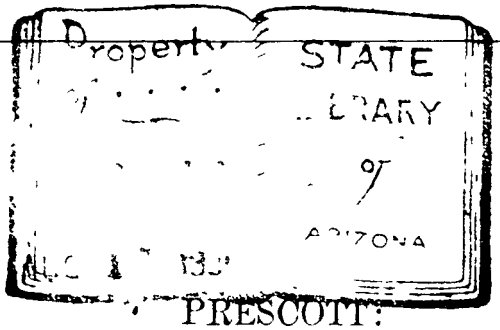
THE HOWELL CODE.

First Legislative Assembly

OF THE

TERRITORY OF ARIZONA.

Session begun on the Twenty-sixth day of September,
and ended on the Tenth day of November, 1864, at Prescott.



PRESCOTT:
OFFICE OF THE ARIZONA MINER,
OFFICIAL PAPER OF THE TERRITORY.
1865.

CODE.

[PUBLIC—No. 23.]

AN ACT to confirm the apportionment and amend certain laws of the Territory of Arizona

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the apportionment of members of the legislative assemblies of the Territory of Arizona, elected and convened in the years eighteen hundred and sixty six, eighteen hundred and sixty seven, and eighteen hundred and sixty eight, made by the governor in accordance with the laws of said Territory, be, and is hereby, declared legal and valid under the organic act.

SEC. 2. *And be it further enacted*, That an election for members of the next legislative assembly, and for all township, county, and district officers, and for delegate to the forty second Congress of the United States, shall be held upon the Tuesday after the first Monday of November, in the year eighteen hundred and seventy, and the governor shall order such election by proclamation to be issued not less than two months previous to said day. In said proclamation he shall declare the number of members of each branch of the legislature to which each county or district of said Territory shall be entitled, and such apportionment shall be based upon the population as shown by the census to be taken in the year eighteen hundred and seventy, under the law of the United States, and if such census is not completed in time, then the apportionment shall be made according to the population as shown by the best information to be obtained. Said election shall be conducted in conformity to the laws of the Territory and of Congress; and the term of office of all township, county, and district officers shall expire upon the thirty-first day of December, eighteen hundred and seventy, and that of all officers elected as herein provided shall begin upon the first day of January, eighteen hundred and seventy one.

SEC. 3. *And be it further enacted*, That the persons thus elected to the next legislative assembly shall meet at the Capitol on the second Wednesday in January, eighteen hundred and seventy one.

SEC. 4. *And be it further enacted*, That the governor shall fill by appointment all vacancies in township, county, or district offices in said Territory, until the thirty first day of December, eighteen hundred and seventy; and until the same time he may remove township, county, and district officers, and fill their places whenever in his judgment the public interest will be promoted thereby.

SEC. 5. *And be it further enacted*, That justices of the peace in said Territory of Arizona shall not have jurisdiction of any matter in controversy where the title or boundaries of land may be in dispute, or where the debt or sum claimed shall exceed three hundred dollars.

Approved, March 23, 1870.

CERTIFICATE.

TERRITORY OF ARIZONA,

OFFICE OF THE SECRETARY.

I, RICHARD C. MCCORMICK, Secretary of the Territory of Arizona, do hereby certify that the HOWELL CODE, as herein contained, is printed as passed by the first Legislative Assembly of the Territory, according to the enrolled copy upon file in my office.

WITNESS my hand and the Seal of the Territory, given at Prescott, this first day of December, A. D. eighteen hundred and sixty-four.

RICHARD C. MCCORMICK,
Secretary of the Territory.

Much greetings are best wishes to
J. L. Kingan Esq Tucson original Please accept
this Copy of the Howell Code which for many
years I have preserved as a treasure as it was
my first experience in practice in Tucson
32 years ago.
I know you will cherish and preserve the
old primer copy of the first-born laws of
Arizona
Tucson January 1st 1904

Sincerely R C Hughes

THE ORGANIC ACT.

AN ACT to provide a temporary government for the Territory of ARIZONA, and for other purposes.

BE IT ENACTED BY THE SENATE AND HOUSE OF REPRESENTATIVES OF THE UNITED STATES OF AMERICA, IN CONGRESS ASSEMBLED: That all that part of the present Territory of New Mexico situate west of a line running due south from the point where the south-west corner of the Territory of Colorado joins the northern boundary of the Territory of New Mexico to the southern boundary line of said Territory of New Mexico, be, and the same is hereby, erected into a temporary government by the name of the Territory of Arizona: Provided, that nothing contained in the provisions of this act shall be construed to prohibit the Congress of the United States from dividing said Territory or changing its boundaries in such manner and at such time as it may deem proper: Provided, further, that said government shall be maintained and continued until such time as the people residing in said Territory shall, with the consent of Congress, form a State government, republican in form, as prescribed in the Constitution of the United States, and apply for and obtain admission into the Union as a State, on an equal footing with the original States.

SEC. 2. And be it further enacted, that the government hereby authorized shall consist of an executive, legislative, and judicial power. The executive power shall be vested in a governor. The legislative power shall consist of a council of nine members, and a house of representatives of eighteen. The judicial power shall be vested in a supreme court, to consist of three judges, and such inferior courts as the Legislative Council may by law prescribe; there shall also be a secretary, a marshal, a district-attorney, and a surveyor-general for said Territory, who, together with the governor and judges of the supreme court, shall be appointed by the President, by and with the advice and consent of the Senate, and the term of office for each, the manner of their appointment, and the powers, duties, and the compensation of the governor, legislative assembly, judges of the supreme court, secretary, marshal, district attorney, and surveyor-general aforesaid, with their clerks, draughtsman, deputies, and sergeant-at-arms, shall be such as are conferred upon the same officers by the act organizing the Territorial government of New Mexico, which subordinate officers shall be appointed in the same manner, and not exceed in number those created by said act; and acts amendatory thereto, together with all legislative enactments of the Territory of New Mexico not inconsistent with the provisions of this act, are hereby extended to and continued in force in the said Territory of Arizona, until repealed or amended by future legislation: Provided, that no salary shall be due or paid the officers created by this act until they have entered upon the duties of their respective offices within the said Territory.

SEC. 3. And be it further enacted, that there shall neither be slavery nor involuntary servitude in the said Territory, otherwise than in the punishment of crimes, whereof the parties shall have been duly convicted; and all acts and parts of acts, either of Congress or of the Territory of New Mexico, establishing, regulating, or in any way recognizing the relation of master and slave in said Territory, are hereby repealed.

Approved February 24, 1863.

OFFICERS OF THE TERRITORY.

POSITION.	NAME.	WHERE FROM.	LOCATION.
Governor	John N. Goodwin	Maine	Prescott.
Secretary	Richard C. McCormick	New York	"
Chief-Justice	William F. Turner	Iowa	"
Associate Justice	William T. Howell	Michigan	Tucson.
" "	Joseph P. Allyn	Connecticut	La Paz.
District-Attorney	Almon Gage	New York	Prescott.
Surveyor-General	Levi Bashford	Wisconsin	Tucson.
Marshal	Milton B. Duffield	California	"
Supt. Indian Affairs	Charles D. Poston	Kentucky	"

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THE FIRST LEGISLATIVE ASSEMBLY.

COUNCIL.

NAME.	RESIDENCE.	OCCUPATION.	AGE.	WHERE BORN.
Coles Bashford	Tucson	Lawyer	47	New York.
Francisco S. Leon	"	Farmer	42	Arizona.
Mark Aldrich	"	Merchant	62	New York.
Patrick H. Dunne	"	Printer	40	Maine.
George W. Leihy	La Paz	Miner	47	New York.
José M. Redondo	Arizona City	Ranchero	40	Mexico.
King S. Woolsey	Agua Frio Ranch	Farmer	32	Alabama.
Robert W. Groom	Groomdale	Miner	40	Kentucky.
Henry A. Bigelow	Weaver	Miner	31	Massachusetts.

HOUSE OF REPRESENTATIVES.

NAME.	RESIDENCE.	OCCUPATION.	AGE.	WHERE BORN.
W. Claude Jones	Tucson	Lawyer	46	Ohio.
John G. Capron	"	Merchant	35	"
Daniel H. Stickney	Cababi	Miner	52	Massachusetts.
Gregory P. Harte	Tucson	Surveyor	24	Ohio.
Henry D. Jackson	"	Wheelwright	40	New York.
Jesus M. Elias	"	Ranchero	35	Arizona.
Nathan B. Appel	Tubac	Merchant	36	Germany.
Norman S. Higgins	Cerro Colorado	Mining Engineer	28	Ohio.
Gilbert W. Hopkins	Maricopa Mine	" "	35	New York.
Luis G. Bouchet	La Paz	Carpenter	32	California.
George M. Holaday	"	Hotel-Keeper	46	Indiana.
Thomas J. Bidwell	Castle Dane	Miner	31	Missouri.
Edward D. Tuttle	Mohave City	"	28	New York.
William Walter	"	"	28	Pennsylvania.
John M. Boggs	Prescott	"	32	Missouri.
Jackson McCrackin	Lynx Creek	"	36	South Carolina.
James Garvin	Prescott	Physician	33	Illinois.
James S. Giles	"	Miner	28	Delaware.

PREPARATION OF THE CODE.

THE first Legislative Assembly of the Territory of Arizona, in accordance with the proclamation of his Excellency Governor Goodwin, convened at Prescott on Monday, September 26th, 1864. The Houses were not organized, owing to the detention of most of the members from the First District, until Thursday, September 29th. On that day the Honorable Coles Bashford, of the First District, was chosen President of the Council, and the Honorable W. Claude Jones, of the same district, was made Speaker of the House of Representatives. The other officers common to such bodies were elected, and the business of the session was duly begun. In the Council on Saturday, October 1st, Mr. Groom, of the Third District, by leave, introduced Council Bill number one, as follows:

An Act Authorizing the Appointment of a Commissioner to report a Code of Laws.

Be it enacted by the Legislative Assembly of the Territory of Arizona:

SEC. 1. That the Governor of said Territory be, and he hereby is, authorized and empowered to appoint a commissioner to prepare and report a code of laws for the use and consideration of the Legislature of said Territory.

SEC. 2. This act shall take effect and be in force from and after its passage.

It was read first time, rules suspended; read second and third times, and passed.

In the House of Representatives upon the same day, the act was taken up, read first time, rules suspended; read second and third times, and passed.

On the same day the Governor transmitted the following messages to the Council:

TERRITORY OF ARIZONA.—OFFICE OF THE GOVERNOR.

PRESCOTT, *October* 1, 1864.

HON. COLES BASHFORD, *President of the Council:*

SIR,—I have approved and signed the act entitled, "An Act authorizing the Appointment of a Commissioner to report a Code of Laws."

JOHN N. GOODWIN.

TERRITORY OF ARIZONA.—OFFICE OF THE GOVERNOR.

PRESCOTT, *October* 1, 1864.

HON. COLES BASHFORD, *President of the Council:*

SIR,—In pursuance of the provisions of an act entitled, "An Act authorizing the Appointment of a Commissioner to report a Code of Laws," approved October 1st, 1864, I have appointed Honorable William T. Howell, of Tucson, a "Commissioner to prepare and report a Code of Laws for the use and consideration of the Legislature of the Territory."

JOHN N. GOODWIN.

On Monday, October 3d, the annexed communication from Judge Howell was laid before both Houses:

TERRITORY OF ARIZONA.—OFFICE OF THE UNITED STATES SUPREME COURT.

TUCSON, *June* 10, 1864.

To the Legislative Assembly:

GENTLEMEN,—On arriving in this Territory in December, 1863, it was found that the laws under which we were required to act were so ill-adapted to our condition, that a complete organization of the Territorial government could not be had until a Code of Laws was substituted for those now in force.

Upon consultation with the civil officers, I undertook the task of preparing a Code, and through my friend, Hon. Coles Bashford, it is now presented to your consideration, containing a bill of rights, and sixty chapters consecutively numbered.

Alarming sickness of my family demands that I shall go to Michigan, which at the time I sincerely regret, and I shall return as speedily as possible.

Trusting that your efforts will conduce to the speedy development and permanent prosperity of our infant Territory,

I am truly your obedient servant,

WILLIAM T. HOWELL.

On the same day the following concurrent resolution was adopted, namely:

Resolved by the Council, the House of Representatives concurring, That the Judiciary Committees of the Council and House of Representatives act as a joint committee for the consideration of the report of the Honorable William T. Howell, commissioner to report a code of laws, to which committees said report is hereby referred; that the Speaker of the House of Representatives be added to said joint committee, and the governor of the Territory be and he is hereby invited to attend the meetings of said committee, and participate in the deliberations thereof; that said committee report back to the Legislative Assembly such portions of said report as in their opinion ought to be referred to other committees, with a recommendation as to such reference.

Thereafter throughout the session, terminating upon the tenth day of November, 1864, much of the time of the Legislature was devoted to the consideration and adoption of the various chapters as presented by the commissioner. Radical changes were made in comparatively few of the chapters, which, as passed, were duly approved by the Governor, and at the close of the session the Code, in accordance with a provision in the concluding chapter, was approved as a whole.

The following resolutions of the Legislative Assembly bear their own explanation:

House Joint Resolution, empowering the Governor of the Territory to make necessary Corrections in the Phraseology and Wording of the Code of Laws.

Be it resolved by the Legislative Assembly of the Territory of Arizona:

That his Excellency the Governor be requested and is hereby empowered to make such corrections in the phraseology and wording of the several chapters of the Code of laws as may be necessary to produce harmony of language in the same; Provided, that no alterations shall affect the intent or substance of the law.

Approved November 9th, 1864.

Council Concurrent Resolution, empowering the Governor of the Territory to change certain Chapters of the Code.

Resolved by the Council, the House of Representatives concurring, That the Governor of this Territory be, and he hereby is, authorized and empowered to change the following chapters of the Code in his hands, passed at the present session of the

Legislature, so that they shall take effect and be in force from and after the twentieth day of April next. Said bills are entitled as follows: Of crimes and punishments; of proceedings in criminal cases; of jails and prisons and confinement therein; of the title to real property by descent; of the distribution, custody, and application of public moneys; of the limitation of actions; of fraudulent conveyances and contracts; of estates in dower; of wills; of probate courts; of marriages; of divorce; of the rights of married women; of the liability for causing death by wrongful neglect or default; of exemptions; of attorneys and counsellors-at-law; of conveyances; of forcible entry and detainer; of corporations for mining purposes; of acequias or irrigating canals; of the support of poor persons and orphan children of Indians; of commissioners of deeds in other States and Territories; of *habeas corpus;* of the incorporation of villages. The following shall be likewise added by the governor to the last section of a chapter entitled "Of Miscellaneous Provisions;" Provided, nothing contained in this section shall be construed to repeal any laws heretofore in existence in this Territory until the laws inconsistent therewith, passed at the present session of the Legislature, shall take effect and be in force, excepting, however, that all of the provisions of this code, and every part thereof, shall take effect and be in force from and after the twentieth day of April, 1865.

Council Concurrent Resolution, tendering Thanks to the Honorable William T. Howell, Associate Justice of the Supreme Court, and Commissioner to report a Code of Laws; also providing that said Code shall, in respect to the author thereof, be known as "The Howell Code."

Resolved by the Council, the House of Representatives concurring, That the thanks of the people of this Territory are due, and are hereby tendered by their representatives in the Legislative Assembly, to the Hon. William T. Howell, associate justice of the supreme court of this Territory, and assigned to the first judicial district, by reason of his anticipating the wants of the Territory, by preparing his excellent and able code of laws therefor; and in respect to the author thereof they shall be known as "The Howell Code."

Resolved, That his Excellency the Governor transmit to Judge Howell a copy of these resolutions.

The present edition of the Howell Code is published by authority of the Legislative Assembly, and at the expense of the Territory (see "An Act in regard to Printing," approved November 9th, 1864, and published in the volume of session laws), as no appropriation has as yet been made by the general government for the purpose. It is considered a temporary edition, to be replaced by one in better form, and with a full index, whenever such appropriation is made.

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CODE.

CODE.

THE TERRITORY OF ARIZONA,

In Legislative Assembly convened, and holden at the Capital of the Territory, the 4th day of October, in the year of our Lord one thousand eight hundred and sixty-four.

Whereas, the administration of civil government requires the adoption of written laws for the security of life, liberty, and property—for the punishment of wrongs, and the enforcement of rights,

Therefore the people of the Territory of Arizona, by their Legislative Assembly in Council and House of Representatives convened, do ordain and establish the following

BILL OF RIGHTS.

Art. 1. Governments are instituted among men for the security of life, liberty, and property, and derive their just powers from the consent of the governed; and to secure these ends, the right to alter or reform is inherent in the people.

Art. 2. The union of the States is a bond of government supreme and indissoluble; the power of the general government over any State, Territory, or people, to enforce obedience to the Constitution and laws, and to punish any violation of the same, is supreme and indisputable.

Art. 3. The military shall at all times be in strict subordination to the civil power.

Art. 4. No soldier shall, in time of peace, be quartered in any house without the consent of the owner; nor in time of war but in the manner prescribed by law.

Art. 5. The right of the people to keep and bear arms for their own defence and that of the government, shall not be infringed.

Art. 6. The civil rights of the people shall not be abridged.

Art. 7. The right of the people to be secure in their persons, houses, papers, and effects, shall not be violated; and no warrant shall issue but on probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the person or things to be seized.

Art. 8. The right of trial by jury shall be secured to all, but a jury trial may be waived by parties in civil cases in the manner prescribed by law.

Art. 9. The privilege of the writ of *habeas corpus* shall not be suspended unless when, in cases of rebellion or invasion, the public safety may require it.

Art. 10. Excessive bail shall not be required, nor excessive fines imposed;

nor shall cruel and unusual punishment be inflicted, nor shall witnesses be unreasonably detained.

Art. 11. All persons shall be bailable by sufficient sureties, unless for capital offences, when the proof is evident or the presumption great.

Art. 12. Representation in the Legislature shall be apportioned according to the population, the largest fraction over a ratio having the preference.

Art. 13. The civil and political rights of no person shall be enlarged or abridged on account of his opinions or belief concerning matters of religion; but the liberty of conscience hereby secured, shall not be so construed as to excuse acts of licentiousness, or justify practices inconsistent with the peace and safety of the people.

Art. 14. No person shall be held to answer for a capital or otherwise infamous crime (except in cases arising in the military and naval service under the laws of the United States, and in cases of misdemeanor under the regulations of the Legislature), unless on presentment or indictment of a grand jury; and in any trial in any court whatever, the party accused shall be allowed to appear and defend in person and with counsel. No person shall be subject to be twice put in jeopardy for the same offence, nor shall he be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use without just compensation.

Art. 15. The people shall have the right freely to assemble together to counsel for the common good, to instruct their representatives, and to petition the governing power for redress of grievances.

Art. 16. Every citizen may freely speak, write, and publish his sentiments on all subjects, being responsible for the abuse of that right; and no law shall be passed to restrain or abridge the liberty of speech, or of the press. In all criminal prosecutions on indictments for libels, the truth may be given in evidence to the jury; and if it shall appear to the jury that the matter charged as libellous is true, and was published with good motives and for justifiable ends, the party shall be acquitted, and the jury shall have the right to determine the law and the fact.

Art. 17. All laws of a general nature shall have uniform operation.

Art. 18. No person shall be imprisoned for debt in any civil action on any *mesne* or final process, unless in cases of fraud or for a debt or liability incurred in an official, fiduciary, or professional capacity.

Art. 19. No bill of attainder, *ex post facto* law, or law impairing the obligation of contract, shall ever be passed.

Art. 20. Neither slavery nor involuntary servitude, unless for the punishment of crimes, shall ever be tolerated in this Territory.

Art. 21. The precious metals are the jewels of sovereignty, and inhere in the supreme sovereign power; no person can acquire title to any such precious metals without the express consent of such power.

Art. 22. All streams, lakes, and ponds of water capable of being used for the purposes of navigation or irrigation, are hereby declared to be public property; and no individual or corporation shall have the right to appropriate them exclusively to their own private use, except under such equitable regulations and restrictions as the Legislature shall provide for that purpose.

Art. 23. Entails in this Territory are abolished, except as herein limited: any person owning any interest in any real estate within this Territory may convey the same by deed or will to his natural child or children, or to his child or children by adoption, and to the issue of such child or children

during their natural lives, whether such issue be begotten and born before the date of such conveyance, or afterwards; and in such conveyance may inhibit the alienation of such estate during the natural lives of such child or children, and of such issue; such estate, when so conveyed by deed, shall not be liable for any debt contracted, or liability incurred by the grantor thereof after the date of such conveyance. The provisions herein contained as to estate conveyed or rights acquired thereunder, are hereby declared to be irrepealable.

Art. 24. No elector shall be obliged to do military duty on the day of election, except in time of war or public danger, or be subject to arrest during his attendance at such election, except for treason, felony, or breach of the peace; nor to attend court as a suitor or witness.

Art. 25. The Territory may contract debts for necessary expenses, not exceeding in the aggregate fifty thousand dollars at any one time, except that the Territory may also contract debts to repel invasion, suppress insurrection, protect its inhabitants against the attacks of hostile Indians, or defend the Territory in time of war. The money arising from the contracting of such debts shall be applied to the purposes for which it was raised, or to repay the same.

Art. 26. No money shall be paid out of the Treasury except in pursuance of appropriations made by law.

Art. 27. The Territory shall not subscribe to or be interested in the stock of any company, association, or corporation.

Art. 28. The Legislature shall not pardon or commute the sentence of any criminal, or grant any bill of divorce, except at the first session of the Legislature; or audit and settle any private claim, or authorize the establishment of any lotteries or sale of lottery tickets within this Territory.

Art. 29. No corporation formed under the laws of this Territory shall be dissolved or its rights impaired, except by judicial proceedings.

Art. 30. No receiver or disburser of public moneys shall be eligible to any office of honor, trust, or profit in this Territory until he shall have accounted for and paid over, agreeably to law, all moneys that shall have come into his hands by virtue of his appointment or election.

Art. 31. The style of all process shall be "In the name of the Territory of Arizona," and all indictments under the laws thereof shall conclude, "Against the peace and dignity of the same."

Art. 32. This bill of rights shall be the supreme law of the land, subject only to the Constitution and laws of the United States. It shall not be altered or amended except by the concurrence of a majority of all the members elected to both branches of the Legislative Assembly. The vote on all alterations or amendments shall be taken by yeas and nays, and entered on the journals of each house.

CHAPTER I.

Of the Construction, Publication, and Distribution of Statutes.

SEC. 1. The original acts of the Legislature shall be deposited with, and kept by the Secretary of the Territory.

SEC. 2. All acts of the Legislature, and joint resolutions having the effect of law, shall take effect and be in force on the thirtieth day after being approved by the Governor, and deposited in the office of the Secretary of the Territory, unless otherwise ordered by the Legislature.

SEC. 3. In the construction of the statutes of this Territory, the following rules shall be observed, unless such construction would be inconsistent with the manifest intent of the Legislature, that is to say:

1. All words and phrases shall be construed and understood according to the common and approved usage of the language; but technical words and phrases, and such as may have acquired a peculiar and appropriate meaning in the law, shall be construed and understood according to such peculiar and appropriate meaning;

2. Every word importing the singular number only, may extend to and embrace the plural number, and every word importing the plural number, may be applied and limited to the singular number; and every word importing the masculine gender only, may extend and be applied to females as well as males;

3. All words purporting to give a joint authority to three or more public officers or other persons, shall be construed as giving such authority to a majority of such officers or other persons, unless it shall be otherwise expressly declared in the law giving the authority;

4. The word "grantor," may be construed as including every person from or by whom any estate in lands passes, in or by any deed; and the word "grantee," as including every person to whom any such interest or estate passes in like manner;

5. The word "inhabitant," may be construed to mean a resident of a city, township, village, district, or county;

6. The words "insane person," shall be construed to include an idiot, a *non compos*, lunatic, and distracted person;

7. The word "issue," as applied to the descent of estates, shall be construed to include all the lawful lineal descendants of the ancestor;

8. The word "land," or "lands," and the words "real estate," shall be construed to include lands, tenements, and real estate, and all rights thereto, and interests therein;

9. The word "month," shall be construed to mean a calendar month; and the word "year," a calendar year; and the word "year" alone, shall be equivalent to the words "year of our Lord;"

10. The word "oath," shall be construed to include the word "affirmation," in all cases where by law an affirmation may be substituted for an oath; and in like cases the word "sworn" shall be construed to include the word "affirmed;"

11. The word "person," may extend and be applied to bodies politic and corporate, as well as to individuals;

12. The words "preceding" and "following," when used by way of reference to any chapter or section of these Statutes, shall be construed to mean the chapter or section next preceding, or next following that in which such reference is made, unless when some other title, chapter, or section is expressly designated in such reference;

13. In all cases in which the seal of any court or public office shall be required to be affixed to any paper issuing from such court or office, the word "seal," shall be construed to mean the impression of such seal on such paper alone, as well as the impression of such seal affixed thereto by means of a wafer or wax;

14. The word "State," when applied to the different parts of the United

States, shall be construed to extend to, and include the District of Columbia, and the several Territories belonging to the United States; and the words "United States," shall be construed to include the said district and Territories;

15. The word "will," shall be construed to include codicils as well as wills;

16. The words "written," and "in writing," may be construed to include printing, engraving, and lithographing; except that in all cases where the written signature of any person is required by law, it shall always be the proper handwriting of such person; or in case he is unable to write, his proper mark;

17. The words "general election," shall be construed to mean the election required by law to be held in the month of September.

SEC. 4. Whenever a statute, or any part thereof, shall be repealed by a subsequent statute, such statute, or any part thereof, so repealed, shall not be revived by the repeal of such subsequent repealing statute.

SEC. 5. The Secretary of the Territory, immediately after any act of the Legislature shall have been deposited with him, shall furnish a true copy thereof to the publishers of the Territorial paper, who shall immediately publish the same in such paper.

SEC. 6. The Secretary of the Territory shall be entitled to one copy of the Statutes for the use of his office, and he shall annually, and from time to time, immediately after their publication in volumes, deposit thirty copies thereof in the Territorial library, for the use of the Legislature, and distribute to the following public officers, persons, corporations, and societies, one copy each, that is to say:

The Governor, members of the Legislature, Secretary of the Council and Clerk of the House, the delegate in Congress, the Secretary of the Territory, each Judge of a Court of Record in the Territory, Attorney-General, Territorial Treasurer, Adjutant-General, Clerk of the Supreme and District Courts, County Recorders, Sheriffs, Keepers of Jails, Justices of the Peace, district libraries (territorial library five copies), the Attorney-General of the United States, the Congressional Library, the President of the United States, and the Governor of each of the States and Territories of the United States, for the use of such State or Territory.

SEC. 7. Each County Recorder, within one month after the adjournment of the Legislature in each year, shall forward to the Secretary of the Territory a statement of the number of officers, persons, corporations, and societies in his county entitled by law to a copy of the laws of the next preceding session of the Legislature; and as soon as the same are ready for distribution, the Secretary of the Territory shall, at his office, deliver to such clerk, or to his order, properly packed, the number of copies set forth in such statement, and take a receipt therefor.

SEC. 8. The County Recorder, on the receipt of the laws, shall give notice thereof in a newspaper published in his county, if there be one, and if not, by posting up notices in three or more of the most public places therein.

SEC. 9. Every person receiving a copy of the laws on account of any office held by him, shall, when he ceases to hold such office, deliver over

to his successor in office all laws received by him as such officer, and take the receipt of his successor therefor, and deposit such receipt with the County Recorder; and any person who shall neglect or refuse to deliver over to his successor in office all laws received by him as aforesaid, shall be liable to such successor in an action for money had and received, to the full amount it shall cost him to furnish himself with such laws, and costs of suit.

SEC. 10. The expense of publishing the notice aforesaid, and of transporting the laws from the office of the Secretary of the Territory to the County Recorder's office, shall be audited and allowed by the Boards of County Commissioners, and paid out of the County Treasury.

SEC. 11. As soon as the laws are ready for distribution, the Secretary of the Territory shall transmit a written or printed notice thereof to each County Recorder; and the expense of such notice, and all accounts for boxes furnished to the Secretary of the Territory for the package and distribution of the laws, when certified by him to be correct, shall be audited and allowed by the Board of Territorial Auditors, and paid out of the Territorial Treasury.

SEC. 12. All expenses incurred in arranging and binding the laws and joint resolutions of the Legislature, and the printing and binding of all Statutes, except this Code, which may be ordered by the Legislature, shall be paid by the Territorial Treasurer on the certificate and order of the Secretary of the Territory.

SEC. 13. The provisions of section five of this chapter shall not extend to the publication in the Territorial paper of this Code, except such portions thereof as shall be ordered so published by the Legislature.

CHAPTER II.

Of the Formation and Rights of Counties.

SEC. 1. This Territory shall be divided into four counties, to be bounded and named as hereinafter provided. First: The county of Pima shall be bounded as follows—On the east by 109th meridian of longitude, on the line of the Territory of New Mexico, on the north by the middle of the main branch of the Gila river, on the west by the line of 113 degrees 20 minutes west longitude, and on the south by the Sonora line. The seat of justice whereof is hereby established at Tucson, and the county commissioners are hereby empowered to establish precincts in said county. Second: The county of Yuma shall be bounded as follows—On the east by the line of 113 degrees 20 minutes west longitude; on the north by the middle of the main stream of the Santa Maria to its junction with Williams's Fork, thence by the middle of the main channel of said stream to its junction with the Colorado; on the west by the main channel of the Colorado river, and on the south by the Sonora line. The seat of justice whereof is hereby established at La Paz, and the county commissioners are hereby empowered to establish precincts in said county. Third: The county of Mohave shall be

bounded as follows—On the east by the line of 113 degrees 20 minutes west longitude; on the north by the parallel of 37 degrees north latitude; on the west by the line of the State of California and the middle of the main channel of the Colorado river; and on the south by Williams's Fork and the main channel of the Santa Maria river, above its junction with the latter stream. The seat of justice whereof is hereby established at Mohave City, and the county commissioners are hereby empowered to establish precincts in said county. Fourth: The county of Yavapai shall be bounded as follows—On the east by the line of the Territory of New Mexico; on the north by the parallel of 37 degrees north latitude; on the west by the line of 113 degrees 20 minutes west longitude; and on the south by the middle of the main channel of the Gila river. The seat of justice whereof is hereby established at Prescott, and the county commissioners are hereby empowered to establish precincts in said county.

SEC. 2. All rights, powers, duties, privileges, and immunities attached to or belonging to the several counties, shall remain until the same are altered by law.

SEC. 3. Each organized county shall be a body corporate and politic for the following purposes, that is to say: To sue and be sued; to purchase and hold real and personal estate for the use of the county; to borrow money for the purpose of erecting and repairing county buildings, and for the building of bridges; to make all necessary contracts, and to do all other necessary acts in relation to the property and concerns of the county.

SEC. 4. Each organized county shall, at its own proper expense, provide a suitable court-house, and a suitable and sufficient jail, and fire-proof county offices, and all other necessary public buildings, and keep the same in good repair.

SEC. 5. The prison limits of each county shall extend to all places within the boundaries of the county.

SEC. 6. Unorganized counties, and other districts annexed, or hereafter to be annexed to any county for judicial purposes, shall for every purpose be deemed to be within the limits of the county to which they are or may be so annexed.

DIVISION OF COUNTIES, ETC.

SEC. 7. When a county seized of lands shall be divided into two or more counties, or shall be altered in its limits by annexing a part of its territory to any other county or counties, each county shall become seized to its own use of such part of said lands as shall be included within its limits as settled by such division or alteration.

SEC. 8. When a county possessed of or entitled to money rights, credits, things in action, or personal property, shall be so divided or altered, or when any unorganized county or district annexed to any county for judicial purposes, shall be organized into a separate county, such money, rights, credits, things in action, or personal property, shall be adjusted and apportioned, and a settlement thereof made between the counties interested therein by the commissioners thereof, as to them, or a majority of them, shall appear to be just and equitable.

SEC. 9. The commissioners aforesaid shall meet for the purpose of such settlement at such time as shall be prescribed by the law, making such division or alteration, or if no time is prescribed by such law, at such time as the commissioners of either of the counties interested shall appoint, at the office of the treasurer of the county retaining the original name of the county so divided or altered.

SEC. 10. Debts owing by a county so divided or altered, shall be apportioned in the manner prescribed in section eight of this chapter, and each county shall thereafter be charged therewith according to such equitable apportionment.

SEC. 11. In case of the division or alteration of a county as aforesaid, if the commissioners cannot agree upon a settlement as provided in this chapter, the commissioners of either of the counties interested, may apply to the district court for any adjoining county for the appointment of three judicious men residing within a county not interested, to be commissioners for the purpose of settling and determining the matters aforesaid between such counties; and upon such application such district court shall appoint such commissioners for the purpose aforesaid.

SEC. 12. Such commissioners shall meet at such time as they may appoint, and after being duly sworn faithfully and impartially to perform their duties as such commissioners, shall proceed to examine into the merits of the matters aforesaid, and shall make such determination in relation thereto as to them, or a majority of them, shall appear to be just and equitable, which determination shall be entered at length by the clerks of the Probate Courts of the respective counties so interested as aforesaid, upon the journals of the county commissioners thereof, and shall be final and conclusive between such parties.

OF LEGAL PROCEEDINGS IN FAVOR OF AND AGAINST COUNTIES.

SEC. 13. Whenever any controversy or cause of action shall exist between any of the counties of this Territory, or between any county and an individual or individuals, such proceedings shall be had either in law or equity, for the purpose of trying and finally settling such controversy, and the same shall be conducted in like manner, and the judgment or decree therein shall have the like effect, as in other suits or proceedings between individuals and corporations.

SEC. 14. In all such suits and proceedings the name in which the county shall sue or be sued shall be, "The County Commissioners of the County of ————" (the name of the county), except in cases where other county officers shall be authorized by law to sue in their name of office for the benefit of the county.

SEC. 15. In all legal proceedings against the county commissioners, the process shall be served on the chairman or clerk of the board, and whenever any suit or proceeding shall be commenced, it shall be the duty of such chairman or clerk to notify the Attorney-General thereof, and to lay before the county commissioners at their next meeting all the information he may have in regard to such suit or proceeding.

SEC. 16. On the trial of any action in which a county shall be interested,

the electors and inhabitants of such county shall be competent witnesses and jurors.

SEC. 17. Any action in favor of a county, which, if prosecuted by an individual, could be prosecuted before a justice of the peace, may be prosecuted by such county in like manner, before any such justice.

SEC. 18. In all suits and proceedings prosecuted by or against counties, or by or against county officers in their name of office, costs shall be receivable as in like cases against individuals.

SEC. 19. When judgment shall be recovered against the county commissioners, or against any county officer in an action prosecuted by or against him in his name of office, no execution shall be awarded or issued upon such judgment, but the same, unless reversed, shall be levied and collected as other county charges; and when so collected, shall be paid by the county treasurer to the person to whom the same shall have been adjudged, upon the delivery of a proper voucher therefor.

SEC. 20. That the board of county commissioners of each and every county in this Territory now organized, or hereafter to be organized, be and they are hereby authorized and required to appoint, in writing, under their hands and seals, the county treasurer, or some other fit and proper person, to locate for the use of said county one-quarter section of land, in accordance with an Act of Congress, passed May twenty-sixth, one thousand eight hundred and twenty-four, entitled "An Act granting to the Counties or Parishes of each State and Territory of the United States in which the Public Lands are situated, the Right of Preëmption to Quarter Sections of Land for Seats of Justice within the same."

SEC. 21. That it shall be the duty of the county recorder in each and every county, to record without fee the written appointment so made as aforesaid, whenever the same shall be for that purpose presented to him at his office; and that said written appointment, when so recorded as aforesaid, shall be a sufficient requisition upon the county treasurer for the person so appointed to demand and receive from the treasurer thereof a sum equal in amount to the minimum price for which one-quarter section of public lands of the United States are sold.

SEC. 22. The county commissioners of each and every of said counties shall be, and they are hereby authorized to loan, on the credit of their county, the sum of two hundred dollars for the purchase of lands agreeably to the provisions of section twenty-one of this chapter.

SEC. 23. In case of the escape of any prisoner or person committed on any civil process by reason of the insufficiency of the jail of any county, whereby the sheriff or other officer performing the duties of sheriff shall be made liable to any party at whose suit such prisoner or person was committed, the county shall reimburse and pay all sums of money received of the sheriff or such other officer by such party by reason of such escape. Provided, that the liability of such county shall not attach until the expiration of one year after this chapter shall take effect as a law; and provided further, that such liability shall not attach until the expiration of one year to any new county hereafter organized, and which shall not contain a jail within its limits at the time of such organization.

CHAPTER III.

Of Sheriffs.

SEC. 1. The sheriff of each organized county shall be elected at the general election, for the term of two years, and shall give bond to this Territory in the penal sum of ten thousand dollars, and with sufficient sureties, not less than three in number, as the judge of the district court or the county commissioners shall approve.

SEC. 2. The condition of such bond shall be in substance as follows: "Whereas, the above bounden hath been elected to the office of sheriff of the county of , at the general election held therein, on the day of : Now therefore, the condition of the above obligation is such, that if the said shall well and faithfully in all things perform and execute the office of sheriff of said county of during his continuance in office by virtue of the said election, without fraud, deceit, or oppression, and shall pay over all moneys that may come into his hands as such sheriff, then the above obligation to be void; otherwise to be and remain in full force."

SEC. 3. Each sheriff may appoint one or more deputies, for whose official acts he shall be in all respects responsible, and may revoke such appointments at his pleasure; and persons may also be deputed by any sheriff, by an instrument in writing, to do particular acts.

SEC. 4. The sheriff of each county shall, as soon as may be, after entering upon the execution of his office, appoint some proper person under-sheriff of the same county, who shall also be a general deputy, to hold during the pleasure of such sheriff; and as often as a vacancy shall occur in the office of such under-sheriff, or he become incapable of executing the same, another shall in like manner be appointed in his place.

SEC. 5. Whenever a vacancy shall occur in the office of sheriff of any county, the under-sheriff of such county shall in all things execute the office of sheriff until a sheriff shall be elected and qualified; and any default or misfeasance in office of such under-sheriff in the meantime, as well as before, shall be deemed to be a breach of the condition of the bond given by the sheriff who appointed him, and also a breach of the condition of the bond executed by such under-sheriff to the sheriff by whom he was appointed.

SEC. 6. Every appointment of an under-sheriff, or of a deputy-sheriff, and every revocation thereof, shall be in writing under the hand of the sheriff, and shall be filed and recorded in the office of the clerk of the district court; and every such under-sheriff or deputy shall, before he enters upon the duties of his office, take the oath prescribed by law. But this section shall not extend to any person who may be deputed by any sheriff to do a particular act only.

SEC. 7. The sheriff shall have the charge and custody of the jails of his county, and of the prisoners in the same; and shall keep them himself or by his deputy or jailor, for whose acts he shall be responsible.

SEC. 8. The sheriff in person, or by his under-sheriff or deputies, shall serve or execute according to law, all process, writs, precepts, and orders issued or made by lawful authority, and to him directed.

SEC. 9. Sheriffs and their deputies may execute all such process as shall be in their hands at the expiration of the term for which such sheriffs were elected, or at the time of their removal from office; and in case of a vacancy in the office of sheriff, every deputy in office under him, having any writ or process in his hands at the time such vacancy happened, shall have the same authority, and be under the same obligation to serve and execute, and return the same, as if such sheriff had continued in office.

SEC. 10. Any default or misfeasance in office of any deputy-sheriff or jailor, after the death, resignation, or removal of any sheriff by whom he was appointed, shall be adjudged a breach of the bond of such sheriff.

SEC. 11. Any action for the malfeasance, misfeasance, or nonfeasance of a sheriff or any of his deputies, may be prosecuted against the executors or administrators of such sheriff, in like manner as if the cause of action survived at common law.

SEC. 12. No sheriff, deputy-sheriff, or coroner shall appear in any court as attorney or counsel for or on behalf of any party in a suit; nor shall he draw, make, or fill up any writ, declaration, plea, or process for any such party; nor shall he, with intent to procure himself to be employed in the collection of any demand or the service of any process, advise or counsel any person to commence any suit or proceeding; and either of said officers for a violation of any provision of this section shall forfeit the sum of fifty dollars.

SEC. 13. Any sheriff, deputy-sheriff, coroner, or constable, may require suitable aid in the service of process in civil or criminal cases, in preserving the peace, or in apprehending or securing any person for felony or breach of the peace, when such officer may have power to perform such duty; and when any such officer shall find resistance made against the execution of any process, or shall have good reason to believe that such resistance will be made, he may take the power of the county, and proceed therewith in proper person to execute such process.

SEC. 14. Whenever a sheriff shall be required by any statutory provision to perform any service in behalf of the Territory and for its benefit, which shall not be made chargeable by law to his county, or to some officer or other person, his account for such services shall be audited by the board of Territorial auditors and paid out of the Territorial treasury.

SEC. 15. It shall be the duty of the sheriff of every county to keep an office at the place where the courts for such county are held, of which he shall file a notice in the office of the clerk of the district court; and to keep the same open during the usual business hours each day, Sundays excepted.

SEC. 16. Every notice or other paper which shall be required to be served on any sheriff, may be served by leaving the same at the office designated by him in such notice, during the hours for which it is required to be kept open; but if there be any person belonging to such office therein, such

notice or paper shall be delivered to such person, and every such service shall be deemed equivalent to a personal service on such sheriff.

SEC. 17. If no notice shall be filed by any sheriff with the district clerk, as herein required, the service of all papers on such sheriff may be made by leaving them at the office of the said clerk, with such clerk or his deputy; and the same shall be deemed equivalent to a personal service on such sheriff.

SEC. 18. Every such sheriff shall be the assessor and collector of taxes for the county for which he is elected; he shall assess all the taxable property of such county agreeably to the provisions of law, and collect all taxes which he shall by law be required to collect; he shall also execute all the lawful orders, and serve all papers and notices required by law to be served by him, issued by the board of county commissioners.

SEC. 19. Whenever any new sheriff shall be elected or appointed in the place of any other, or upon the expiration of any sheriff's office, and shall have qualified and given the security required by law, the clerk of the district court shall grant a certificate, under the seal of the district court for the county, that the person so elected has qualified and given such security.

SEC. 20. Upon the service of such certificate on the former sheriff, his powers as such sheriff, except in the cases otherwise expressly provided by law, shall cease.

SEC. 21. Within ten days after the service of such certificate upon such former sheriff, he shall deliver to his successor: 1st. The jail of the county, with all its appurtenances, and the property of the county therein. 2d. All the prisoners then confined in such jail. 3d. All process, orders, rules, commitments, and all other papers or documents in his custody, authorizing or relating to the confinement of such prisoners; and if any process shall have been returned, a statement in writing of the contents thereof, and when returned. 4th. All writs of *capias* and other original process, and all precepts and other documents for the summoning of a grand or petit jury, then in his hands, which shall not have been fully executed by him. 5th. All executions, attachments, and final process, then in his hands, except such as the said former sheriff shall have executed, or shall have begun to execute by the collection of money thereon, or by a levy on property in pursuance thereof.

SEC. 22. At the time of such delivery, the said former sheriff shall execute an instrument, reciting the property, process, documents, and prisoners delivered, specifying particularly the process or other authority by which each prisoner was committed and is detained, and whether the same be returned or delivered to such new sheriff; which instrument shall be delivered to such new sheriff, who shall acknowledge in writing upon a duplicate thereof, the receipt of the property, process, documents, and prisoners therein specified, and shall deliver such duplicate and acknowledgment to the said former sheriff.

SEC. 23. Notwithstanding the election of a new sheriff, the former sheriff shall return, in his own name, all writs of *capias*, all other original process, all attachments, and all executions which he shall have fully executed; and

shall proceed to complete the execution of all final process and attachments which he shall have begun to execute by a collection of money thereon, or by a levy on property in pursuance thereof.

SEC. 24. If any former sheriff shall neglect or refuse to deliver to his successor the jail, process, documents, and prisoners in his charge, as herein required, such successor may, notwithstanding, take possession of such jail, and take the custody of the prisoners therein confined, and may compel the delivery of such process and documents, in the manner prescribed in this code.

SEC. 25. If, at the time when any new sheriff shall have qualified and given the security required by law, the office of the former sheriff shall be executed by his under-sheriff, or by a coroner of the county, such under-sheriff or coroner shall in all things comply with the preceding provisions, and shall perform the duties required of such former sheriff.

CHAPTER IV.

Of Coroners.

SEC. 1. Two coroners shall be elected for each of the organized counties of this Territory, at the general election, for the term of two years, who shall give bond to this Territory in such penal sum, and with sufficient sureties, as the judge of the district court shall direct and approve, the condition of which bond shall be in substance the description of the office.

SEC. 2. When there shall be no sheriff or under-sheriff in any county, the judge of the district court shall designate one of the coroners to perform the duties of sheriff, which coroner so designated shall be vested with the same powers and be liable in the same manner as sheriffs, until a sheriff shall be elected and qualified; and shall have the custody and control of the jail and prisoners therein; and when the sheriff for any cause shall be committed to the jail, the coroner living nearest the jail shall be keeper thereof during the time the sheriff shall remain a prisoner therein.

SEC. 3. Every coroner within his county shall serve and execute process of every kind, and perform all other duties of the sheriff when the sheriff shall be a party or interested in any case; and in all cases where the coroner may execute the duties of the sheriff, he shall have the same powers conferred upon, and proceed in the same manner, prescribed for the sheriff in the performance of similar duties, and such coroners shall be liable in the same manner and to the same extent as sheriffs are made liable in similar cases.

SEC. 4. When a coroner is informed that a person has been killed, or has committed suicide, or has suddenly died under such circumstances as afford a reasonable ground to suspect that his death has been occasioned by the act of another by criminal means, he shall go to the place where the body is, and forthwith summon not less than nine nor more than fifteen persons qualified by law to serve as jurors, to appear before him forthwith at the

place where the body of the deceased is, to inquire into the cause of the death.

SEC. 5. Every person summoned as a juror, who shall fail to appear without having a reasonable excuse, shall forfeit any sum not exceeding one thousand dollars, to be recovered by the coroner, in the name of the Territory, before any court of competent jurisdiction in the proper county, and when collected to be paid over to the county treasurer for the use of the county.

SEC. 6. When six or more of the jurors attend they shall be sworn by the coroner to inquire who the person was, and when, where, and by what means he came to his death, and into the circumstances attending his death, and to render a true verdict thereon according to the evidence afforded them, or arising from the inspection of the body.

SEC. 7. The coroner may issue subpœnas for witnesses returnable forthwith or at such time and place as he may appoint, which may be served by any competent person. He must summon and examine as witnesses, every person who in his opinion, or that of any of the jury, has any knowledge of the facts, and he may summon a surgeon or physician to inspect the body and give a professional opinion as to the cause of the death.

SEC. 8. A witness served with a subpœna may be compelled to attend and testify, or be punished by the coroner for disobedience, in like manner as upon a subpœna issued by a justice of the peace.

SEC. 9. After inspecting the body and hearing the testimony, the jury shall render their verdict, and certify the same by an inquisition in writing, signed by them, and setting forth who the person killed is, and when, where, and by what means he came to his death, and if he was killed or his death occasioned by the act of another, by criminal means, who is guilty thereof.

SEC. 10. The testimony of the witnesses examined before the coroner's jury shall be reduced to writing by the coroner, or under his direction, and shall be forthwith filed by him in the office of the clerk of the district court of the county.

SEC. 11. If, however, the person charged with the commission of the offence be arrested before the inquisition can be filed, the coroner shall deliver the same, with the testimony taken, to the magistrate before whom such person may be brought, who shall return the same, with the depositions and statement taken before him, to the office of the clerk of the district court of the county.

SEC. 12. If the jury find that the person was killed by another under circumstances not excusable or justifiable by law, or that his death was occasioned by the act of another by criminal means, and the party committing the act be ascertained by the inquisition, and not in custody, the coroner shall issue a warrant, signed by him, with his name of office, into one or more counties, as may be necessary for the arrest of the person charged.

SEC. 13. The coroner's warrant shall be substantially the following form:

TERRITORY OF ARIZONA, COUNTY OF .

To any sheriff, constable, marshal, or policeman in this Territory:

An inquisition having been this day found by a coroner's jury, before me, stating that A. B. has come to his death by the act of C. D. by criminal means (or as the case may be found by the inquisition), you are therefore commanded forthwith to arrest the above-named C. D., and take him before the nearest or most accessible magistrate in this county.

Given under my hand, this day of }
A. D., 18 . }

E. F., *Coroner of the county of* .

SEC. 14. The coroner's warrant may be served in any county, and the officer serving it shall proceed thereon in all respects as upon a warrant of arrest on an information before a magistrate.

SEC. 15. The coroner must, within thirty days after an inquest upon a dead body, deliver to the county treasurer any money or other property which may be found upon the body, unless claimed in the meantime by the legal representatives of the deceased. If he fail to do so, the treasurer may proceed against the coroner to recover the same, by a civil action in the name of the county.

SEC. 16. Upon the delivery of money to the treasurer, he shall place it to the credit of the county. If it be other property, he shall within thirty days sell it at public auction, upon reasonable public notice, and shall in like manner place the proceeds to the credit of the county.

SEC. 17. If the money in the treasury be demanded within six years by the legal representatives of the deceased, the treasurer shall pay it to them, after deducting the fees and expenses of the coroner and of the county in relation to the matter, or the same may be paid at any time thereafter upon the order of the district court of the county.

SEC. 18. Before auditing and allowing the account of the coroner, the board of county commissioners shall require from him a statement in writing of any money or other property found upon persons on whom inquests have been held by him, verified by his oath to the effect that the statement is true, and that the money or property mentioned in it has been delivered to the legal representatives of the deceased or to the county treasurer.

SEC. 19. If the office of coroner be vacant, or he be absent or unable to attend, the duties of his office may be performed by any justice of the peace of the county, with the like authority, and subject to the same obligations and penalties as the coroner.

SEC. 20. A justice of the peace acting as coroner shall be entitled to the same fees, payable in the same manner.

SEC. 21. When an inquest shall be held by the coroner, and no person shall offer to take charge of the body of the deceased, it shall be his duty to cause the body to be decently interred, and in case there shall not be sufficient property belonging to the estate of the deceased to pay the necessary expenses of said burial, said expenses shall be a legal county charge, as also his fees and expenses for all duties in relation to dead bodies.

CHAPTER V.

Of County Recorders.

SEC. 1. There shall be a county recorder in each county of this Territory, who shall keep his office at the county seat, which shall be styled the recorder's office.

SEC. 2. The recorder shall keep suitable and well-bound books, wherein shall be recorded, in a fair, large, and legible hand, all instruments in writing, authorized and required to be recorded.

SEC. 3. Before entering upon the duties of their offices the recorders of the several counties shall take the oath of office required by law, and shall enter into bonds of not less than two nor more than ten thousand dollars, at the discretion of the district judge of their respective counties, with two or more sufficient sureties, to be approved by said judge, or in his absence by the judge of probate of the proper county, conditioned for the faithful performance of their duties as recorders.

SEC. 4. The recorder of each county may appoint a deputy, who shall hold his office during the pleasure of the recorder. Such appointment shall be in writing, filed and recorded in the office of the recorder, and the recorder so appointing him, and his sureties, shall be responsible for the faithful performance of his duties by such deputy.

SEC. 5. In case of a vacancy in the office of recorder, or his absence or inability to perform the duties of his office, the deputy shall perform the duties of recorder during the continuance of such vacancy, absence, or inability.

SEC. 6. The board of county commissioners shall audit and settle the accounts of the recorders of their respective counties, for books and furniture necessary for the use of their offices.

SEC. 7. The recorders shall have the custody of, and shall safely keep and preserve, all the books, records, maps, and papers deposited in their offices.

SEC. 8. It shall be the duty of the recorders, upon the payment of their fees for the same, to record or cause to be recorded correctly, in large and strong-bound books, and in a fair, large, and legible hand,—1st. All deeds, mortgages of real estate, releases of mortgages, powers of attorney to convey real estate, and leases for a longer period than one year, which shall have been proved or acknowledged according to law. 2d. All certificates of marriage and marriage contracts. 3d. All wills admitted to probate. 4th. All official bonds required by law to be recorded in their offices. 5th. All notices of the pendency of an action affecting real estate. 6th. All notices of preëmption claims.

SEC. 9. The several classes of instruments mentioned in the several subdivisions of the preceding section shall be recorded in separate books.

SEC. 10. Every recorder shall keep in separate volumes—1st. An index

of deeds, labelled "Grantors," each page of which shall be divided into four columns, as follows: Names of grantors, names of grantees, date of deeds, where recorded. 2d. An index of deeds labelled "Grantees," each page of which shall be divided into four columns, with heads to the respective columns as follows: Names of grantees, names of grantors, date of deeds, where recorded. 3d. An index of mortgages, labelled "Mortgagors," each page of which shall be divided into five columns, with heads to the respective columns as follows: Names of mortgagors, names of mortgagees, date of mortgages, where recorded, when discharged. 4th. An index of mortgages, labelled "Mortgagees," each page of which shall be divided into five columns, with heads to the respective columns as follows: Names of mortgagees, names of mortgagors, date of mortgages, where recorded, when discharged.

SEC. 11. The books containing the record of deeds and mortgages, aside from the indices, shall be designated by numbers ("One," "Two," etc.), and all legal notices, assignments and discharges of mortgages, and powers of attorney, shall be recorded in separate books, to be procured and labelled for that purpose.

SEC. 12. The instruments of conveyance mentioned in section forty-one of chapter forty-three, entitled "Of Conveyances," shall not be entered upon the general index of deeds mentioned in section ten of this chapter, but the book in which they are recorded shall contain an index in which they shall be entered, in the same manner as deeds are required to be entered.

SEC. 13. When any instrument, paper, or notice, authorized by law to be recorded, shall be deposited in the recorder's office for record, the recorder or his deputy shall endorse upon the same the time when it was received, noting the year, month, day, hour, and minute of its reception, and shall record the same, or cause the same to be recorded, without delay, together with the acknowledgments, proofs, and certificates, written over or under the same, with the plats, surveys, schedule, and other papers thereto annexed, in the order and as of the time when the same was delivered for record, in a fair and a large and legible hand, and shall note at the foot of the record the year, month, day, hour, and minute of its reception, and the name of the person at whose request it was recorded.

SEC. 14. The recorder shall endorse upon each instrument, paper, and notice, the book and page or pages of the book in which it is recorded, and the year, month, day, hour, and minute when recorded, and after the same is recorded shall deliver it upon request to the party leaving the same for record, or to his order.

SEC. 15. It shall be the duty of recorders, upon the application of any person, and upon the payment or tender of the legal fees therefor, to make searches for conveyances, mortgages, and all other instruments, papers, or notices, recorded or filed in their respective offices, and to furnish a certificate thereof, stating the names of the parties to such instruments, papers, and notices, the dates thereof, the year, month, day, hour, and minute they were recorded or filed, the extent to which they affect the property to which they relate, and the book and page or pages where they are recorded.

SEC. 16. If any recorder, to whom any instrument proved or acknow-

ledged according to law, or any paper or notice which may by law be recorded, shall be delivered for record, shall—1st. Neglect or refuse to record such instrument, paper, or notice, within a reasonable time after receiving the same; or—2d. Record any instruments, papers, and notices untruly, or in any other manner than as hereinbefore directed; or if any recorder—1st. Neglect or refuse to keep in his office such indices as are required by this chapter, or to make the proper entries therein, or—2d. Neglect or refuse to make the searches, and to give the certificate required by this chapter, or if such searches or certificate be incomplete and defective in any important particular affecting the property, in respect to which the search is requested; he shall be liable to the party aggrieved for double the amount of the damages which may be occasioned by such neglect or refusal, or by such incompleteness or defect in the searches and certificate, and an action may be brought on his official bond by the party aggrieved.

SEC. 17. If any recorder shall wilfully neglect or refuse to perform any of the duties required of him by this chapter, or shall wilfully perform them in any other manner than is required by law, he shall be deemed guilty of a misdemeanor in office, and on conviction thereof in any court of competent jurisdiction, may be punished by fine not exceeding one thousand dollars, or by imprisonment for a period not exceeding six months, or by both such fine and imprisonment. If the recorder shall alter, change, or obliterate any records deposited in his office, or insert any new matter therein, he shall be liable on his official bond to the party aggrieved for double the amount of damages which may be occasioned by such neglect, refusal, or alteration.

SEC. 18. Copies of all papers duly filed in the recorder's office, and transcripts from the books of records kept therein, certified by the recorder to be full, true, and correct copies or transcripts, shall be received in all courts and in all actions and proceedings, with the like effect as the original instruments, papers, and notices, recorded or filed, could be if produced.

SEC. 19. All books of record, and all indices in the recorder's office, and all maps, charts, surveys and other papers on file therein, shall during all office hours be open for the inspection of any person who may desire to inspect them, and may be inspected without charge, and the recorder shall arrange the books of record and indices in his office in such suitable places as to facilitate their inspection.

SEC. 20. The county recorders are hereby authorized and empowered to take within their respective counties the acknowledgment and proof of all instruments and papers which may be by law recorded.

SEC. 21. The recorder shall not be bound to record any instrument or file any paper or notice, or furnish any copies, or to render any service connected with his office, other than for the public, until his fees for the same, as prescribed by law, are paid or tendered.

An Act in regard to County Recorders.

SEC. 1. That the county recorder shall be ex-officio clerk of the probate and county courts.

SEC. 2. The governor of the Territory shall appoint recorders for the different counties, who shall be ex-officio clerks of the probate and county courts, and who shall serve until their successors are duly elected and qualified as provided by law.

SEC. 3. All acts or parts of acts conflicting with this act are hereby repealed and declared null and void.

SEC. 4. This act shall take effect and be in force from and after its passage.

CHAPTER VI.

Of County Treasurers.

SEC. 1. The county treasurer shall hold his office for the term of two years, and until his successor is chosen and qualified.

SEC. 2. Each county treasurer, before entering upon the duties of his office, shall enter into bond, with two or more sufficient freehold sureties, to the acceptance of the board of county commissioners of his proper county, in a penalty of double the probable amount of money that may at any time come to his hands as such treasurer, with condition for the paying over all moneys according to law, which shall come into his hands for Territorial, county, or other purposes, and that he will faithfully and promptly discharge all the duties of his said office that are now or may hereafter be enjoined on him by law.

SEC. 3. He shall likewise take the oath prescribed by law, to be endorsed on his certificate of election, before entering on the duties of his office.

SEC. 4. Whenever the office of county treasurer shall become vacant by death, removal out of the county, resignation, neglect to give bond, or from any other cause, the county commissioners shall forthwith convene and appoint some suitable person to fill such vacancy, with the approval of the district judge; and the person so appointed shall give bond and take the oath in the like manner as required of county treasurers in the second section of this act, and shall hold his office until the expiration of the term for which his predecessor was elected or appointed, and until his successor is chosen and qualified.

SEC. 5. Each county treasurer shall keep his office at the seat of justice for his county, and shall keep a fair and accurate account of all money by him received, showing the amount thereof, the time when, from whom, and on what account received; also of all disbursements by him made, showing the amount thereof, the time when, to whom, and on what account paid; and he shall so arrange his books that the amount received and paid on account of separate and distinct funds or specific appropriations shall be exhibited in separate and distinct accounts, as well as that the whole receipts and expenditures shall be shown by one general or cash account; but no money received for taxes charged on the duplicate of the current year shall be by the treasurer entered on his account with the county until

he shall have made his annual settlement therefor with the county commissioners.

SEC. 6. It shall be the duty of the county treasurer to receive all moneys due and accruing to the county, or which are required by law to be paid to him or into the county treasury, and to pay and disburse the same on the warrant of the county commissioners or other authority of law.

SEC. 7. When any money shall be paid to the county treasurer (except such as shall have been paid on account of taxes charged on the duplicate), he shall give to persons paying the same a receipt therefor, which receipt such person shall forthwith deposit with the clerk of the county commissioners, who shall charge the treasurer therewith.

SEC. 8. The books, account, and vouchers of the county treasurer shall at all times be subject to the inspection and examination of the county commissioners, and it is hereby made their duty to make such examination and count the money on hand at least once each year.

SEC. 9. The county treasurer, when an order drawn on him as such treasurer, by the commissioners of his county, is presented for payment, shall, if there be money in the treasury for that purpose, redeem the same, and shall write on the face of such order, "redeemed," the date of redemption, and shall sign his name thereto.

SEC. 10. When any order or warrant shall be presented to the county treasurer for payment, and the same is not paid for want of funds, the treasurer shall endorse thereon, "not paid for want of funds," annexing the date of presentation, and sign his name thereto, and from that time till redeemed, said order or warrant shall bear ten per cent. interest per annum.

SEC. 11. So soon as there shall be sufficient funds in the treasury of the county to redeem the orders or warrants drawing interest, the county treasurer shall give notice in some newspaper in his county, or if no newspaper be printed in his county, then by written or printed notices posted upon the court-house door, stating therein that he is ready to redeem said orders or warrants, and from the date of such notice said orders or warrants shall cease to bear interest.

SEC. 12. When the county treasurer shall redeem any order on which any interest is due, he shall note on the order or warrant the amount of interest paid thereon, and shall enter on his account the amount of such interest, distinct from the principal.

SEC. 13. Orders or warrants drawn on the county treasury, and properly attested, shall be entitled to preference as to payment out of moneys in the treasury properly applicable to such order, according to the priority of time in which the same may have been presented. The time of presenting such order shall be noted by the treasurer, and upon the receipt of any moneys into the treasury not otherwise appropriated, it shall be the duty of the treasurer to set apart the same, or so much thereof as may be necessary for the payment of such order or warrant.

SEC. 14. All orders or warrants drawn on the county treasurer, and payable out of the county revenue, shall be received in payment of the county

tax, when tendered in payment therefor, without regard to the priority of the number thereof or time at which the same may have been presented for payment.

SEC. 15. The county treasurer shall, on the first Mondays of March, June, September, and December in each year, deposit with the county commissioners all orders and warrants by him redeemed, and take the clerk's receipt thereof.

SEC. 16. Whenever suit shall have been commenced against any delinquent county treasurer, the district court may in its discretion remove such treasurer from office and appoint some person to fill the vacancy thereby created, as hereinafter directed.

SEC. 17. Each county treasurer on going out of office shall deliver to his successor in office all the public money, books, accounts, papers, and documents in his possession; and in case of the death of any county treasurer, his legal representatives shall in like manner deliver up all such moneys, books, accounts, papers, and documents, as shall come into their possession; Provided, however, no percentage shall be allowed to the treasurer on any money by him received from his predecessor in office or from any legal representatives of such predecessor.

SEC. 18. Every county treasurer shall make a full settlement of all his accounts with the county commissioners annually, said settlement to be governed in the manner prescribed by law, and said treasurer shall be credited with all sums paid for printing and publishing notices required to be given by him in the course of his official duties, and with all sums paid by him for blank books, stationery, and office furniture, to be paid on the order of the county commissioners.

SEC. 19. The county treasurer shall receive all moneys directed to be paid to him for licenses, specific taxes, or permits, and shall issue to the persons entitled thereto licenses or permits for such times and upon such terms and conditions as shall be prescribed by law. He shall file a statement with the clerk of the board of county commissioners on the first Monday of each month, and transmit a copy thereof to the Territorial treasurer, of the amount received by him for licenses during the preceding month, the persons by whom paid, and the amount paid by each.

SEC. 20. The said treasurer shall also, within three days after any moneys shall have been paid him by the sheriff or clerk of the court, or otherwise by due course of law, on account of fines, penalties, or forfeitures, file with the clerk of the county commissioners a statement of the amount received by him, from whom received, and on what account, and immediately transmit a copy of the same to the Territorial treasurer.

SEC. 21. The county treasurer shall pay to the Territorial treasurer all moneys required by law to be paid by him, and shall annually in the month of October in each year make a full settlement with the Territorial treasurer, containing a statement at length of the debts, credits, and transactions between the said officers during the preceding year, a duplicate copy of which settlement and statement he shall file in the office of the clerk of the county commissioners within twenty days after the same shall have been made.

SEC. 22. The treasurer shall keep his office open for the transaction of business from 10 o'clock A.M. until 4 o'clock P.M., of every day in the year, Sundays excepted.

CHAPTER VII.

Of Justices of the Peace.

SEC. 1. There shall be elected at the next general election two justices of the peace in each election precinct in this Territory by the qualified electors thereof, and in each such precinct containing a population of more than eight hundred persons, to be ascertained by the probate court, there shall be an additional justice elected.

SEC. 2. The votes given for justices of the peace shall be canvassed and returned in the same manner as votes are canvassed and returned for other county officers; and upon such returns being made the county recorder shall proceed to estimate the votes, make and deliver a certificate to the person or persons elected, as in the case of other county officers.

SEC. 3. Each justice of the peace shall hold his office for one year unless removed as provided by law, and until his successor is duly elected and qualified; justices of the peace for the purposes of removal or supplying vacancies shall be considered as county officers.

SEC. 4. At the general election held previously to the expiration of the term of office of any justice of the peace, another shall be elected to supply his place.

SEC. 5. Every justice of the peace upon the expiration of his term of office, or upon his removal therefrom, shall upon demand deliver to his successor in office his docket and all books and papers belonging to, or in possession of such justice by virtue of his office; and if any such justice of the peace shall neglect or refuse so to deliver such docket, books, and papers, he shall forfeit a sum not exceeding five hundred dollars, to be recovered in an action in the name of the Territory of Arizona, and shall be, moreover, liable to any person interested for all damages he may sustain in consequence of such neglect or refusal; and in case of the refusal of such justice to comply with the requirements of this chapter, he shall be deemed guilty of a misdemeanor.

SEC. 6. The newly elected and qualified justice of the peace shall, upon receipt of the books and papers of his predecessor, proceed to carry out all the unfinished business of his predecessor according to law.

SEC. 7. Each justice of the peace appointed to fill vacancy, and each justice elected for a term, within ten days after notice of his election or appointment, shall take and subscribe his oath of office before some officer authorized to administer oaths, and file the same with the district clerk.

SEC. 8. Each justice of the peace, before he enters upon the duties of his office, and within the time limited by law for filing his official oath, shall execute, in the presence of the district clerk, with one or more sufficient sureties, to be approved of by such clerk, an instrument in writing, by which such justice and his sureties shall jointly and severally agree to pay to each and every person entitled thereto, all such sums of money as such justice shall become liable to pay, on account of any money which may come into his hands as a justice of the peace, upon demand thereof, made by such person, his agent, or attorney.

SEC. 9. Such district clerk shall endorse on such instrument his approval of the sureties therein named, and such justice shall then cause the same to be filed in the office of the district clerk; and a copy of such instrument, certified by such clerk under his hand and seal, shall be presumptive evidence of the contents and execution thereof.

SEC. 10. If any justice of the peace shall fail to comply with such agreement, it shall be competent for any person to whom such justice shall have become liable by reason of such failure, to sue such justice and his sureties, or any of them, and to declare against them generally, for money had and received to the use of the plaintiff; and if the plaintiff on the trial of such suit shall establish his right to recover, he shall have judgment for principal, interest, and costs.

SEC. 11. If any justice of the peace shall enter upon the execution of his office before having filed his official oath or agreement as aforesaid, as required by law, he shall forfeit the sum of one hundred dollars.

CHAPTER VIII.

Of Constables.

SEC. 1. There shall be elected annually at the general election of each precinct one and not more than two constables, by the qualified electors thereof, and who shall hold their office for one year, and until their successors are elected and qualified.

SEC. 2. No constable shall assist in conducting any suit or proceedings in the justice's court, nor purchase or be interested in any claims purchased for the purpose of being prosecuted in such courts, or be a purchaser or interested in the purchase of any property sold by him on any process issued by any justice of the peace.

SEC. 3. Every person elected or appointed to the office of constable before he enters upon the duties of his office, and within the time prescribed by law for filing his official oath, shall execute, with sufficient sureties, to be approved by the judge of probate or a justice of the peace, an instrument in writing, by which said constable and his sureties shall jointly and severally agree to pay to each and every person who may be entitled thereto, all such sums of money as the said constable may become liable to pay, on account of any neglect or default of said constable in the

service or return of any process that may be delivered to him for service or collection.

SEC. 4. Such probate judge or justice of the peace shall endorse on such instrument his approbation of the sureties therein named, and shall then cause the same to be filed in the office of the county recorder; and a copy of such instrument, certified by the county recorder, shall be presumptive evidence of the contents and execution thereof, and all actions against a constable or his sureties, upon any such instrument, shall be prosecuted within two years after the expiration of the year for which the constable named therein shall have been elected.

SEC. 5. Constables shall serve all warrants, notices, and processes lawfully directed to them, and shall perform such other duties as are required of them by law.

SEC. 6. Any constable may serve any writ, process, or order lawfully directed to him, in any township in his county.

SEC. 7. Constables shall be ministerial officers of justices of the peace, and shall attend upon the sessions of the district courts for their respective counties when notified for that purpose by the sheriff.

CHAPTER IX.

Of the Local Administration of Counties.

SEC. 1. The judge of probate, the sheriff, and the recorder of each county now or hereafter organized shall constitute a board of commissioners, to be known as the "county commissioners." They shall meet annually in their respective counties, at the office of the recorder, for the transaction of business as a board of county commissioners. They may also hold special meetings when necessary, at such times and places as they may find convenient within their respective counties, and shall have power to adjourn from time to time as they may deem necessary. The annual meetings of the board of county commissioners shall be on the second Monday of October in each year.

SEC. 2. Any two of the officers named in the first section of this chapter shall constitute a quorum for the transaction of the ordinary business of the county, and all questions which shall arise at their meetings shall be determined by the votes of a majority; and all questions which involve the raising of money to erect or repair county buildings, the formation of election precincts, or the suspension or removal from office of any person, shall be determined by yeas and nays, and entered at length upon the record to be kept by them as hereinafter provided. They shall sit with open doors, and all persons may attend their meetings. The judge of probate shall be chairman of the board, and shall preside at all meetings of the board during the year, if present, but in case of his absence from any meeting the sheriff shall be temporary chairman. Every chairman shall have power to

administer an oath to any person concerning any matter submitted to the board, or connected with the discharge of their duties; to issue subpœnas for witnesses and compel their attendance in the same manner as courts of law.

SEC. 3. The recorder of each county, or in his absence his deputy, shall be clerk of the board of County Commissioners. It shall be the duty of such clerk: 1. To record all the proceedings of such board in a book provided for that purpose. 2. To make regular entries of all their resolutions and decisions upon all questions. 3. To record the vote of each member on any question submitted to the board, if required by any member present. 4. To preserve and file all accounts acted upon by the board. 5. To certify under his seal of office, without charge, copies of any or all resolutions or decisions, or any of the proceedings of such board, or any member thereof, when required by such member or the attorney-general, or when required by any other person, upon the payment of twenty cents per folio therefor; and such certified proceedings shall be *primâ facie* evidence of the matters therein set forth. 6. To perform such other and further duties as such board may by resolution require.

SEC. 4. The books, records, and accounts of the board of county commissioners shall be deposited with the recorder, and shall be open, without any charge, to the examination of all persons. It shall be the duty of the clerk to designate upon every account upon which any sum shall be audited and allowed by the board, the amount so audited and allowed, and the charges for which the same was allowed.

SEC. 5. It shall be the duty of such board of county commissioners, as often as once in each year, and at such other times as they may think the safety of the public money requires it, to examine the accounts of the treasurer of their county, and to ascertain and enter upon their records a full statement of such account; and upon such examination the county treasurer shall exhibit to them all his books and accounts, and all the vouchers relating to the same, and shall also exhibit and count all public moneys in his hands belonging to his office as treasurer.

SEC. 6. If, upon the annual settlement with the treasurer, or upon an examination of the accounts and affairs of his office at any other time, the said board of commissioners shall find that such treasurer has lost, used, misapplied, or converted to his own use any of the public moneys, papers, or vouchers, which shall have come into his possession as such treasurer, and they shall be of opinion that the public interest requires it, they shall immediately enter into and take possession of all the moneys, books, papers, vouchers, effects, and property pertaining to said office of treasurer, and make a true statement and inventory thereof, which shall be filed with the clerk of said board, and entered at large upon their records. They shall then, by order, immediately suspend or remove such treasurer in their discretion, and in case of his suspension said board shall immediately appoint some suitable person to discharge the duties of treasurer until such treasurer be restored or his successor appointed. The person so appointed shall take the oath and give the bonds required by law of the treasurer, and thereupon shall possess all the powers, and be subject to all the liabilities of such treasurer; and if upon further investigation it shall appear that such treasurer had not been guilty of using, losing, misapplying, or converting to his own use any of the public moneys, papers, or vouchers,

in this section mentioned, the said board may by order revoke such former order and appointment, and restore him to office, or they may make an order absolutely removing him from such office, and appoint a successor for the remainder of his unexpired term, who shall take the oath and give the bonds aforesaid, and shall thereupon be the treasurer of the county; Provided, that the absolute removal of such treasurer and the appointment of a successor shall be approved by the district judge, as provided in this chapter.

SEC. 7. Upon the death or absconding of any county treasurer, the said board shall take the same proceedings in regard to the moneys and effects of his office, and the statement and inventory thereof as is provided in the next preceding section, and shall retain the same to be delivered to his successor as soon as he shall have entered upon the duties of his office.

SEC. 8. It shall be the duty of such board, as often as shall be necessary, to cause the court-house, jail, and public offices and buildings of their county, to be duly repaired at the expense of such county; Provided, that the sums expended in such repairs shall not exceed the sum of two thousand dollars in any one year.

SEC. 9. They shall also cause to be prepared within the jails of their respective counties, at the expense of such counties, so many cells for the reception of convicts as may be deemed necessary.

SEC. 10. They shall cause to be made out and published yearly, immediately after their annual meeting, in at least one newspaper, if there be one published in the county, if not in some paper published nearest thereto within the Territory, a report of the receipts and expenditures, which shall contain a statement of the names of each claimant, the amount claimed, and the amount allowed, of the year next preceding, the accounts rejected, and a full statement of the amount of the treasurer's account on the last settlement, and the amount deficient or balance on hand, as ascertained in making the settlement.

SEC. 11. The said several boards of county commissioners shall have power, and they are hereby authorized at any meeting thereof lawfully held—1. To purchase for the use of the county any real estate necessary for the site of any court-house, jail, clerk's office, or any other public county buildings in such county. 2. To fix upon and determine the site of such buildings, if not previously located. 3. To authorize the sale or leasing of any real estate belonging to such county, and to prescribe the mode in which any conveyance thereof shall be executed, and to convey the same by such mode as they shall determine. 4. To remove or designate a new site for any county buildings required to be at the county seats, when such removal shall not exceed the limits of the village or city at which the county seat is located. 5. To cause to be erected the necessary buildings for court-houses, jails, clerk's offices, and other county buildings, and to prescribe the manner of erecting the same; Provided, that suitable rooms may be rented by such board for such purposes at the county seats, until such buildings shall be erected. 6. To borrow or raise by tax, upon such county, any sum of money necessary for any of the purposes mentioned in this chapter; Provided, that no greater sum than three thousand dollars shall be borrowed in any one year, and at an interest not exceeding ten

per centum per annum; And provided further, that no tax upon the taxable property of such county shall in any one year exceed the amount of one dollar and fifty cents upon each one hundred dollars of the valuation of such property as determined by lawful authority. 7. To provide for the payment of any loan made by them by tax upon such county, which shall in all cases be within ten years from the date of such loan. 8. To prescribe and fix the compensation for all services rendered for, and adjust all claims against their respective counties, and for the sums so adjusted may draw their order upon the county treasurer, signed by their chairman and countersigned by their clerk, to be paid out of the proper fund appropriated for the purposes for which such order is drawn. 9. To extend and determine by resolution the time in which the sheriff as collector of taxes shall make his return to the county treasurer: but such time shall in no case exceed thirty days from the time fixed by general law; and in all cases interest shall be charged on all taxes so extended for the time of such extension. 10. To direct and provide for the raising of any money which may be necessary to defray the contingent expenses and charges of said county, and the necessary charges incident to or arising from the execution of their lawful authority, subject to the limitations prescribed in this chapter. 11. To require any officers, whose salary or compensation is paid by the county, to make a report under oath to them on any subject or matters connected with the duties of their offices, and to require such officers to give such bonds, or further or additional bonds, as shall be reasonable or necessary, for the faithful performance of their respective duties; and any such officer who shall neglect or refuse to make such report, or to give such bond within ten days after being so required, may be removed from office by such board, and the office declared vacant—and such board may fill such vacancy for the unexpired portion of the time for which such officer was elected or appointed; Provided, that if such officer be the sheriff, treasurer, or recorder of the county, he shall not be removed and his office declared vacant, except with the approval of the district judge of the United States courts, assigned to hold the courts for such county, or if removed, shall a successor be appointed by said board unless by the approval of such judge; and such approvals shall be in writing, signed by said judge and deposited and filed in the offices of the clerk of the board of county commissioners, and of the clerk of the district court of the same county. 12. To represent their respective counties, and to have the care and management of the property and business of the county in all cases where no other provision is made by law. 13. To establish such rules and regulations in reference to the management of the interests and business concerns of the county, and in reference to the mode of proceedings before such board, as they shall deem necessary and proper, in all matters not otherwise specially provided for by law. 14. To incorporate villages, with such powers as shall be given by general law for that purpose. 15. To provide suitable safes or vaults for the depository of the moneys, books, records, and papers of the several county officers, and of the clerk of the district court. 16. To appoint a constable by writing, signed by them, and filed in the office of the clerk, whenever a vacancy in such office shall occur in any precinct of their county, and the constable so appointed shall take the oath and give the bond required by law, before entering on the duties of his office.

SEC. 12. The said board of county commissioners shall have power to establish by name or number election precincts within their respective

counties, whenever—1st. A territory shall contain twenty or more legal voters, living in proximity to each other, and at a distance of more than six miles from any other precinct established by law. 2d. When application shall be made to said board by eight or more of such legal voters to have such election precinct established, designating in some proper form the boundaries thereof, and accompanying the same by an outline map of the territory proposed to be included in such election precinct.

SEC. 13. Whenever the requirements of the preceding section shall have been complied with, the board may grant the application, and establish such election precinct; and if the application shall be granted, a copy of said map, with a certified statement of the action of said board thereunto annexed, shall be filed in the office of the clerk of said board, and a certified statement of the action of said board shall also be filed in the office of the secretary of the Territory, and it shall be the duty of the secretary of the Territory to cause the same to be published with the laws of the next Legislature, after the filing thereof, in the same manner as other laws are published, and the clerk of the board shall prepare and transmit to the secretary of the Territory such certified statement within twenty days after having been granted by such board.

SEC. 14. Every precinct thus established shall remain until altered or discontinued by said board, and at the next election held therein after such precinct shall be established, the qualified electors thereof may elect one justice of the peace and one constable for such precinct.

SEC. 15. No election precinct shall be considered a body politic and corporate for any purpose whatever, nor shall they have or exercise any powers, except such as are expressly given by law.

SEC. 16. The board of commissioners of the several counties within this Territory are hereby authorized and empowered to lay out, establish, alter, discontinue, or open, all Territorial roads heretofore or now laid out, or hereafter to be laid through or within their respective counties, whenever they may deem it for the interest of the public.

SEC. 17. Upon the petition of five electors, or upon their own personal inspection, the said board of commissioners of any county may cause the line of any road to be surveyed and located therein; and upon such survey being reported to such board, and upon their examination of such survey and report, the said board may declare such road or roads duly laid out, established, discontinued, opened, or altered, as the case may be, incorporating in such declaration a true description of such road or roads, as described and contained in the survey so reported to them; such roads shall not be less than four nor more than six rods in width.

SEC. 18. The proceedings of such board, in laying out, establishing, discontinuing, opening, or altering any highway, under the provisions of this chapter, shall be recorded, together with the survey thereof, at full length, by the clerk of such board, in a separate book to be kept for that purpose, which shall be subject at all times to inspection, by any person resident of such county, or interested, free from charge. Copies of such records, duly certified by the clerk of such board, shall be *prima facie*

evidence of the matters therein contained in all courts and places in this Territory.

SEC. 19. Any person feeling himself aggrieved by the laying out, altering, discontinuing, or opening of any road, may apply to said board for his damages therefor, and said board are hereby authorized to agree upon and pay such person his damages: Provided, the damages so agreed upon shall not exceed the sum of one hundred dollars, to be paid to any one person.

SEC. 20. Whenever it shall become necessary, under the provisions of the four last preceding sections, to enter upon and take the lands of any person, and in case such owner or owners refuse or fail to agree upon the compensation to be allowed and paid them therefor, it shall be lawful for such board to apply to any justice of the peace of the county to issue a *venire facias*, directed to the sheriff or any constable of the county in which such board may be located, commanding him to summon and return a jury of six disinterested householders or freeholders of such county to appear before him, at a time to be therein stated, to inquire into the necessity of using such ground or premises, and the just compensation to be made therefor to the owner or owners of, or interested in such lands or premises; which jury being first duly sworn by said justice, faithfully and impartially to inquire into the necessity of using such lands or premises, and the just compensation to be made therefor, and after having viewed the premises, if they shall deem it necessary to use said lands or premises for the purposes aforesaid, shall inquire and assess such damages, and recompense as they may think proper to award to the owner or owners of such lands and premises according to their estates and interest therein; and the said justice shall, upon the return of such assessment or verdict, render judgment therefor confirming the same; and such sum or sums so assessed, together with the costs, shall be paid or tendered before such road shall be laid out, altered, or established, as the case may be. It shall thereupon be lawful for said board to cause the said lands and premises to be used for the purposes aforesaid; Provided, that any party claiming damages, as aforesaid, may have a right to remove such proceedings to the district court of the same county, by appeal, upon giving notice of his intention to do so to said justice in writing, within ten days after the rendition of such verdict, and the judgment thereon as aforesaid; and the said justice shall, within twenty days after such notice, file a transcript of the proceedings aforesaid, duly certified by him, in the office of the clerk of the said district court, and the same proceedings shall thereafter be had therein as prescribed by law in other cases of appeal; but in case the final judgment of the said district court shall not exceed the damages assessed before the said justice, at least twenty dollars, the party appealing shall pay the costs occasioned by such appeal.

SEC. 21. For the purpose of working or repairing roads, erecting or repairing bridges or culverts, the said board is hereby authorized to expend a sum not exceeding one thousand dollars annually.

SEC. 22. All roads heretofore opened and used for public travel for five years or more, shall be deemed public roads for all purposes; but may be reëstablished upon survey, or altered or discontinued by the said board.

SEC. 23. Whenever any member of said board is interested in any question before them, the county treasurer may act as a member of said board,

and for such purpose shall possess all the powers and be subject to all the liabilities of any other member of said board; and in case of the absence or inability of the sheriff to serve at any of the meetings of said board, the under-sheriff shall, for the time being, be a member of said board, with like powers and liabilities; and in the absence or inability of the recorder to serve at any such meetings of said board, his deputy shall be a member thereof, with like powers and liabilities.

SEC. 24. If any member of said board shall neglect or refuse to perform any of the duties which are, or shall be required of him by law, as a member of the board of county commissioners, without just cause therefor, he shall for each offence forfeit the sum of two hundred dollars.

SEC. 25. The said board may authorize the sheriff of the proper county to offer a reward, not exceeding five hundred dollars in any one case, for the apprehension of any person convicted of, or charged with the commission of a crime, and who is at large, or having been arrested or imprisoned, has escaped.

SEC. 26. A copy of any proceedings required by law to be filed or recorded by the clerk of said board of commissioners, duly certified by such clerk, shall be deemed and taken to be *prima facie* evidence of the contents thereof, in all courts and places within this Territory.

SEC. 27. All expenses incurred by any of said boards, under the provisions of this chapter, shall be chargeable to the proper county, and may be paid and audited the same as other claims against the same county.

SEC. 28. Each member of said board shall be allowed a compensation of three dollars per day for his services and expenses in attending the meetings of such board; and ten cents for each mile travelled in going to and returning from the place of such meeting, to be audited by the board and paid by the county.

SEC. 29. Nothing herein contained shall abridge the powers or duties of any board of county commissioners, or any member thereof, which they may hereafter possess under any other law of this Territory, and not provided for in this chapter.

SEC. 30. Each member of the board of county commissioners, before he enters upon the duties of his office, shall take and subscribe the oath of office required by law, and shall file the same in the office of the clerk of the district court of the proper county.

CHAPTER X.

Of Crimes and Punishments.

FIRST DIVISION.

Persons capable of committing Crimes.

SEC. 1. In every crime or public offence there must be a union or joint operation of act and intention, or criminal negligence.

SEC. 2. Intention is manifested by the circumstances connected with the perpetration of the offence, and the sound mind and discretion of the person accused.

SEC. 3. A person shall be considered of sound mind who is neither an idiot nor lunatic, nor affected with insanity, and who hath arrived at the age of fourteen years: or before that age, if such person know the distinction between good and evil.

SEC. 4. An infant under the age of fourteen years shall not be found guilty of any crime.

SEC. 5. An idiot shall not be found guilty or punished for any crime with which he or she may be charged.

SEC. 6. Any person counselling, advising, or encouraging an infant under the age of fourteen years, a lunatic, or idiot, to commit any offence, shall be prosecuted for such offence, when committed, as principal, and if found guilty shall suffer the same punishment that would have been inflicted on such person counselling, advising, or encouraging, as aforesaid, had he or she committed the offence directly, without the intervention of such idiot, lunatic, or infant.

SEC. 7. A married woman, acting under the threats, command, or coërcion of her husband, shall not be found guilty of any crime not punishable with death: Provided, it appear from all the facts and circumstances of the case that violent threats, command, or coërcion were used; and in such case the husband shall be prosecuted as principal, and receive the punishment which would have otherwise been inflicted on the wife if she had been found guilty.

SEC. 8. Drunkenness shall not be an excuse for any crime, unless such drunkenness be occasioned by the fraud, contrivance, or force of some other person or persons, for the purpose of causing the perpetration of an offence, in which case the person or persons so causing said drunkenness for such malignant purpose shall be considered principal or principals, and suffer the same punishment as would have been inflicted on the person or persons committing the offence, if he, she, or they had been possessed of sound reason and discretion.

SEC. 9. All acts committed by misfortune or accident shall not be deemed criminal when it satisfactorily appears that there was no evil design or intention or culpable negligence.

SEC. 10. A person committing a crime not punishable with death, under threats or menaces which sufficiently show that his or her life was in danger, or that he or she had reasonable cause to believe and did believe that his or her life was in danger, shall not be found guilty, and such threats or menaces being proved and established, the person or persons compelling by such threats or menaces the commission of the offence, shall be considered as principal or principals, and suffer the same punishment as if he or she had perpetrated the offence.

SECOND DIVISION.

Accessaries in Crimes.

SEC. 11. An accessary is he or she who stands by and aids, abets, or assists; or who, not being present aiding, abetting, or assisting, hath advised and encouraged the perpetration of the crime. He or she who thus aids, abets or assists, advises or encourages, shall be deemed and considered as principal, and punished accordingly.

SEC. 12. An accessary after the fact, is a person who, after full knowledge that a crime has been committed, conceals it from the magistrate, or harbors and protects the person charged with or found guilty of the crime. Any person being found guilty of being an accessary after the fact shall be imprisoned for any term not exceeding two years, and fined in a sum not exceeding five thousand dollars, to be regulated by the circumstances of the case and the enormity of the crime.

THIRD DIVISION.

Who may be a Witness in Criminal Cases.

SEC. 13. The party or parties injured shall in all cases be competent witnesses; the credibility of all such witnesses shall be left to the jury, as in other cases.

SEC. 14. No black or mulatto, or Indian, Mongolian, or Asiatic, shall be permitted to give evidence in favor of or against any white person. Every person who shall have one-fourth part or more of negro blood shall be deemed a mulatto, and every person who shall have one-half of Indian blood shall be deemed an Indian.

SEC. 15. The solemn affirmation of witnesses shall be deemed sufficient. A false and corrupt affirmation shall subject the witness to all the penalties and punishments provided for those who commit wilful and corrupt perjury.

FOURTH DIVISION.

Crimes against the Government and People.

SEC. 16. Crimes against the government and people shall consist of treason and misprision of treason, and can be committed only by persons owing allegiance to the Territory.

SEC. 17. Treason against the Territory shall consist only in levying war against it, adhering to its enemies, or giving them aid and comfort. No person shall be convicted of treason unless on the evidence of two witnesses to the same overt act, or confession in open court. The punishment of treason shall be death. When the overt act of treason shall be committed without the limits of this Territory, the person charged therewith may be arrested, tried, and punished in any county of this Territory within the limits of which he may be found, and the offence may be charged to have been committed in the county where he may be arrested.

SEC. 18. Misprision of treason shall consist in the knowledge and concealment of treason, without otherwise assenting to, or participating in the crime. Any person being found guilty thereof shall be punished by confinement in the Territorial prison for any term not exceeding five years.

FIFTH DIVISION.

Offences against the Persons of Individuals.

SEC. 19. Murder is the unlawful killing of a human being, with malice aforethought, either express or implied. The unlawful killing may be effected by any of the various means by which death may be occasioned.

SEC. 20. Express malice is that deliberate intention unlawfully to take away the life of a fellow-creature, which is manifested by external circumstances capable of proof.

SEC. 21. Malice shall be implied when no considerable provocation appears, or when all the circumstances of the killing show an abandoned and malignant heart. The punishment of any person convicted of the crime of murder shall be death.

SEC. 22. Manslaughter is the unlawful killing of a human being without malice expressed or implied, and without any mixture of deliberation. It must be voluntary, upon a sudden heat of passion, caused by a provocation apparently sufficient to make the passion irresistible; or involuntary in the commission of an unlawful act, or a lawful act without due caution or circumspection.

SEC. 23. In cases of voluntary manslaughter there must be a serious and highly provoking injury inflicted upon the person killing, sufficient to excite an irresistible passion in a reasonable person, or an attempt by the person killed to commit a serious personal injury on the person killing.

SEC. 24. The killing must be the result of that sudden violent impulse of passion supposed to be irresistible; for if there should appear to have been an interval between the assault or provocation given and the killing, sufficient for the voice of reason and humanity to be heard, the killing shall be attributed to deliberate revenge and punished as murder.

SEC. 25. Involuntary manslaughter shall consist in the killing of a human being without any intent so to do; in the commission of an unlawful act, or a lawful act, which probably might produce such a consequence in an unlawful manner: Provided, that where such involuntary killing shall happen

in the commission of an unlawful act, which in its consequences naturally tends to destroy the life of a human being, or is committed in the prosecution of a felonious intent, the offence shall be deemed and adjudged to be murder.

SEC. 26. Every person convicted of the crime of manslaughter shall be punished by imprisonment in the Territorial prison for a term not exceeding three years, and fined not exceeding five thousand dollars.

SEC. 27. In order to make the killing either murder or manslaughter, it is requisite that the party die within a year and a day after the stroke received, or the cause of death administered; in the computation of which the whole of the day on which the act was done shall be reckoned the first.

SEC. 28. If the injury be inflicted in one county and the party die within another county or without the Territory, the accused shall be tried in the county where the act was done, or the cause of death administered. If the party killing shall be in one county, and the party killed be in another county at the time the cause of death shall be administered, the accused may be tried in either county.

SEC. 29. Justifiable homicide is the killing of a human being in necessary self-defence, or in defence of habitation, property, or person, against one who manifestly intends or endeavors, by violence or surprise, to commit a felony, or against any person or persons who manifestly intend and endeavor, in a violent, riotous, or tumultuous manner, to enter the habitation of another for the purpose of assaulting or offering personal violence to any person dwelling or being therein.

SEC. 30. A bare fear of any of these offences, to prevent which the homicide is alleged to have been committed, shall not be sufficient to justify the killing. It must appear that the circumstances were sufficient to excite the fears of a reasonable person, and that the party killing acted under the influence of those fears, and not in a spirit of revenge.

SEC. 31. If a person kill another in self-defence, it must appear that the danger was so urgent and pressing that in order to save his own life, or prevent his receiving great bodily harm, the killing of the other was absolutely necessary; and it must appear also that the person killed was the assailant, or that the slayer had really and in good faith endeavored to decline any further struggle before the mortal blow was given.

SEC. 32. If an officer in the execution of his office in a criminal case, having legal process, be resisted and assaulted, he shall be justified if he kill the assailant. If an officer or private person attempt to take a person charged with felony, and he or they be resisted in the endeavor to take the person accused, and to prevent the escape of the accused, and by reason of such resistance he or she be killed, the officer or private person so killing shall be justified: Provided, that such officer or private person previous to such killing shall have used all reasonable efforts to take the accused without success, and that from all probability there was no prospect of being able to prevent injury from such resistance, and the consequent escape of such person.

SEC. 33. Justifiable homicide may also consist in unavoidable necessity,

without any will or desire, and without any inadvertence or negligence in the party killing. An officer who, in the execution of public justice, puts a person to death in virtue of a judgment of a competent court of justice, shall be justified. The officer must, however, in the performance of his duty, proceed according to the sentence and the law of the land.

SEC. 34. Excusable homicide by misadventure is when a person is doing a lawful act, without any intention of killing, yet unfortunately kills another; as where a man is at work with an axe, and the head flies off and kills a bystander; or where a parent is moderately correcting his child, or a master his servant or scholar, or an officer punishing a criminal, and happens to occasion death, it is only a misadventure, for the act of correction is lawful; but if a parent or master exceed the bounds of moderation, or the officer the sentence under which he acts, either in the manner, the instrument, or quantity of punishment, and death ensue, it will be manslaughter or murder, according to the circumstances of the case.

SEC. 35. All other instances which stand upon the same footing of reason and justice as those enumerated, shall be considered justifiable or excusable homicide.

SEC. 36. The homicide appearing to be justifiable or excusable, the person indicted shall, upon his trial, be fully acquitted and discharged.

SEC. 37. The killing being proved, the burden of proving circumstances of mitigation, or that justify or excuse the homicide, will devolve on the accused, unless the proof on the part of the prosecution sufficiently manifests that the crime committed only amounts to manslaughter, or that the accused was justified or excused in committing the homicide.

SEC. 38. If any woman shall endeavor, privately, either by herself or the procurement of others, to conceal the death of any issue of her body, male or female, which, if born alive, would be a bastard, so that it may not come to light, whether it shall have been murdered or not; every such mother being convicted thereof shall suffer imprisonment in the county jail for a term not exceeding one year: Provided, however, that nothing herein contained shall be so construed as to prevent such mother from being indicted and punished for the murder of such bastard child.

SEC. 39. The distinction between petit treason and murder is abolished. Any person who might have been indicted for petit treason, shall hereafter be indicted for murder, and, if convicted, punished accordingly.

SEC. 40. If any person shall, by previous appointment or agreement, fight a duel, and in so doing shall kill his antagonist or any person or persons, or shall inflict such wound as that the injured shall die thereof within one year thereafter, every such offender, his second, as well as the second of the person killed, and all aiders, abettors, and counsellors, being thereof duly convicted, shall be punished by imprisonment in the Territorial prison for any term not exceeding five years nor less than one year.

SEC. 41. If any person shall hereafter challenge another to fight a duel with any deadly weapon, or in any manner whatever, the probable issue of which might result in the death of either; or if any person shall accept a challenge or agree to fight a duel, every person so offending shall, upon con-

viction thereof, be punished by imprisonment in the Territorial prison for any term not exceeding three years nor less than one year, and be fined in a sum not exceeding one thousand dollars.

SEC. 42. If any person shall willingly and knowingly carry or deliver any written challenge, or verbally deliver any message intended as, or purporting to be a challenge, or shall be present at the fighting of any duel as aforesaid as a second, or aid or give countenance thereto, such person being duly convicted thereof, shall be punished by imprisonment in the Territorial prison for any term not exceeding three years nor less than one year, and be fined in a sum not exceeding one thousand dollars.

SEC. 43. If any person shall post another, or in writing or print shall use any reproachful or contemptuous language to or concerning another for not fighting a duel, or for not sending or accepting a challenge, he shall be imprisoned in the county jail for a term not exceeding six months, and fined in any sum not exceeding one thousand dollars.

SEC. 44. If any person shall, without deadly weapons, upon previous concert and agreement, upon any wager, or for money or any other reward, fight one with another, upon conviction thereof, they or either or any of them, and all persons present aiding and abetting, shall be punished by imprisonment in the Territorial prison for a term not exceeding two years. Should death ensue to any person in such fight, the person or persons causing such death shall be punished by imprisonment in the Territorial prison for a term not more than ten nor less than three years.

SEC. 45. Every person who shall wilfully and maliciously administer or cause to be administered to or taken by any person, any poison or other noxious or destructive substance or liquid, with the intention to cause the death of such person, and being thereof duly convicted, shall be punished by imprisonment in the Territorial prison for a term not less than ten years, and which may extend to life. And every person who shall administer or cause to be administered or taken, any medicinal substances, or shall use or cause to be used any instruments whatever, with the intention to procure the miscarriage of any woman then being with child, and shall be thereof duly convicted, shall be punished by imprisonment in the Territorial prison for a term not less than two years nor more than five years: Provided, that no physician shall be affected by the last clause of this section, who in the discharge of his professional duties deems it necessary to produce the miscarriage of any woman in order to save her life.

SEC. 46. Mayhem consists in unlawfully depriving a human being of a member of his or her body, or disfiguring or rendering it useless. If any person shall unlawfully cut out or disable the tongue, put out an eye, slit the nose, ear, or lip, or disable any limb or member of another, or shall voluntarily and of purpose put out an eye or eyes, every such person shall be guilty of mayhem, and on conviction shall be punished by imprisonment in the Territorial prison for a term not less than one nor more than five years.

SEC. 47. Rape is the carnal knowledge of a female, forcibly and against her will. Every person of the age of fourteen years and upwards, who shall have carnal knowledge of any female child under the age of ten years, either with or without her consent, shall be adjudged to be guilty of the crime of rape, and shall be punished by imprisonment in the Territorial pri-

son for a term not less than five years, and which may extend to life.

SEC. 48. The infamous crime against nature, either with man or beast, shall subject the offender to be punished by imprisonment in the Territorial prison for a term not less than five years, and which may extend to life.

SEC. 49. An assault is an unlawful attempt, coupled with a present ability to commit a violent injury on the person of another.*

SEC. 50. An assault, with an intent to commit murder, rape, mayhem, robbery, or larceny, shall subject the offender to imprisonment in the Territorial prison for a term not less than one year, nor more than fourteen years. An assault with a deadly weapon, instrument, or other thing, with an intent to inflict upon the person of another a bodily injury, or to put him in fear, or compel him by fear or threats to obey any unlawful order or command, where no considerable provocation appears, or where the circumstances of the assault show an abandoned and malignant heart, shall subject the offender to imprisonment in the Territorial prison not exceeding two years, or to a fine not exceeding five thousand dollars, or to both such fine and imprisonment.

SEC. 51. Assault and battery is the unlawful beating of another, and a person duly convicted thereof shall be fined in any sum not exceeding one thousand dollars, or imprisoned in the county jail not exceeding one year.

SEC. 52. False imprisonment is the unlawful violation of the personal liberty of another, and consists in confinement or detention without sufficient legal authority. Any person convicted of false imprisonment shall pay all damages sustained by the person so imprisoned, and be fined in any sum not exceeding five thousand dollars, or imprisoned in the county jail for a term not exceeding one year.

SEC. 53. Kidnapping is the forcible abduction or stealing away of a man, woman, or child, from his or her own country, and sending or taking him or her into another.

SEC. 54. Every person who shall forcibly steal, take, or arrest any man, woman, or child, whether white, black, or colored, or any Indian in this Territory, and carry him or her into another county, State, or Territory, or who shall forcibly take or arrest any person or persons whatsoever with a design to take him or her out of this Territory without having established a claim, according to the laws of the United States, shall, upon conviction, be deemed guilty of kidnapping, and be punished by imprisonment in the Territorial prison for any term not less than one nor more than ten years for each person kidnapped or attempted to be kidnapped.

SEC. 55. Every person who shall hire, persuade, entice, decoy, or seduce by false promises, misrepresentations, and the like, any negro, mulatto, or colored person to go out of this Territory, or to be taken or removed therefrom, for the purpose and with the intent to sell such negro, mulatto, or colored person into slavery or involuntary servitude, or otherwise to employ him or her for his or her own use, or to the use of another, with-

* For the punishment of this offence, see sec. 145.

out the free will and consent of such negro, mulatto, or colored person, shall be deemed to have committed the crime of kidnapping, and upon conviction thereof shall be punished as in the next preceding section specified.

SIXTH DIVISION.

Offences against Habitations and other Buildings.

SEC. 56. Every person who shall wilfully and maliciously burn, or cause to be burned, any dwelling-house, kitchen, office, shop, barn, stable, store-house, warehouse, or other building, the property of any other person, or any church, meeting-house, school-house, State-house, court-house, work-house, jail, or other public building, or any ship, vessel, boat, or other water craft, or any bridge of the value of fifty dollars or more erected across any of the waters of this Territory, such person so offending shall be deemed guilty of arson, and upon conviction thereof shall be punished by imprisonment in the Territorial prison for a term not less than one year nor more than ten years; and should the life or lives of any person or persons be lost in consequence of any such burning as aforesaid, such offender shall be deemed guilty of murder, and shall be indicted and punished accordingly.

SEC. 57. Every person who shall wilfully and maliciously set fire to any of the buildings, or other property described in the foregoing section, with the intent to burn or destroy the same, upon conviction thereof shall be punished by imprisonment in the Territorial prison for any term not exceeding two years.

SEC. 58. Every person who shall in the night time forcibly break and enter, or without force (the doors and windows being open) enter into any dwelling-house, or any other house whatever, or tent, or vessel, or other water craft, with the intent to commit murder, robbery, rape, mayhem, larceny, or other felony, shall be deemed guilty of burglary, and upon conviction thereof shall be punished by imprisonment in the Territorial prison for a term not less than one nor more than ten years.

SEVENTH DIVISION.

Offences against Property.

SEC. 59. Robbery is the felonious and violent taking of money, goods, or other valuable thing from the person of another by force or intimidation. Every person guilty of robbery shall be punished by imprisonment in the Territorial prison for a term not less than one, nor more than ten years: provided that on a second conviction for the same crime the punishment shall be death in the discretion of the jury.

SEC. 60. Every person who shall feloniously steal, take, and carry, lead or drive away the personal goods or property of another of the value of fifty dollars or more, shall be deemed guilty of grand larceny, and upon conviction thereof shall be punished by imprisonment in the Territorial prison for any term not less than one year nor more than ten years: Provided, that on a second conviction of the same crime the punishment shall be death in the discretion of the jury.

SEC. 61. Every person who shall feloniously steal, take, and carry, lead or drive away the personal goods or property of another under the value of fifty dollars, shall be deemed guilty of petit larceny, and upon conviction thereof shall be punished by imprisonment in the county jail not more than six months, or by fine not exceeding five hundred dollars, or by such fine or imprisonment in the discretion of the court.

SEC. 62. Bonds, promissory notes, bank notes, bills of exchange, or other bills, orders, drafts, checks, or certificates, or warrants for or concerning money, goods, or property due or to become due, or to be delivered; and any deed or writing containing a conveyance of land, or any valuable contract in force, or any receipt, release, or defeasance, or any other instrument whatever, shall be considered as personal goods, of which larceny may be committed.

SEC. 63. Every person who for his own gain, or to prevent the owner from again possessing his property, shall buy or receive stolen goods, or anything the stealing of which is declared to be larceny, or property obtained by robbery or burglary, knowing the same to have been so obtained, shall, upon conviction, be imprisoned in the Territorial prison for a term not exceeding five years, or punished by fine not exceeding one thousand dollars, or by both such fine and imprisonment; and every such person may be tried, convicted, and punished as well before as after the trial of the principal. No person convicted of the offence specified in this section shall be condemned to imprisonment in the Territorial prison, unless the value of the thing bought or received shall amount to fifty dollars; but the same shall be punished as provided in cases of petit larceny.

SEC. 64. All property obtained by larceny, robbery, or burglary, shall be restored to the owner; and no sale, whether in good faith on the part of the purchaser or not, shall divest the owner of his right to such property. Such owner may maintain his action not only against the felon, but against any person in whose possession he may find the property.

SEC. 65. Every person who shall mark or brand, alter or deface the mark or brand of any horse, mare, colt, jack, jennet, mule, or any one or more head of neat cattle, or sheep, goat, hog, shoat, or pig, not his or her own property, but belonging to some other person, or cause the same to be done with intent thereby to steal the same, or to prevent identification thereof by the true owner, shall, on conviction thereof, be punished by imprisonment in the Territorial prison for a term not less than one year nor more than five years.

SEC. 66. Every servant, officer, or person employed in any public department, station, or office of the government of this Territory, or of any county of this Territory, or in any office of a corporate body, who shall embezzle, steal, secrete, or fraudulently take and carry away any money, goods, chattels, effects, book or books of record, or of account, bond or bonds, promissory note or notes, bank bill or notes, or any other writing or security for the payment of money or property, of whatever description it may be, being the property of said Territory, county, or corporate body, shall, on conviction thereof, be punished by imprisonment in the Territorial prison for a term not less than one year nor more than ten years.

SEC. 67. If any officer or person who now is, or hereafter may be, in-

trusted by law to collect, disburse, receive, or safely keep any money or moneys, revenue or revenues, belonging to this Territory, to the school fund of this Territory, to the school fund of any county, to any county in this Territory, to any canal, turnpike, or railroad fund of this Territory, or any county thereof, or to any fund for the improvement of any public road, river, creek, or other water-course bordering on or within this Territory, or to any other fund now being or hereafter to be established by law for public purposes, and who shall fail or refuse to pay over all moneys, warrants, bills, notes, and orders which any such officer or person shall receive for disbursement, and has not disbursed, or shall collect, or shall receive for safe keeping, belonging to this Territory, to any county of this Territory, or to any such fund as aforesaid, when such officer or person shall be thereto required by law, and demand duly made by the successor or successors of such officer or person in office, or by the officer or person to whom such money, warrants, bills, notes, or orders ought by law to be paid over, or his or their attorney or agent, duly authorized in writing, signed and acknowledged, if such demand be practicable; every such officer or person shall, on conviction thereof, be punished by imprisonment in the Territorial prison for a term not less than one year nor more than ten years: Provided, that no person shall be imprisoned in the Territorial prison under this section unless the money not paid over shall amount to one hundred dollars, or if it appear that such failure or refusal shall be occasioned by unavoidable accident or loss. Every person convicted under the provisions of this section shall for ever thereafter be disqualified from holding any office of honor, trust, or profit in this Territory.

SEC. 68. Every person who shall fraudulently or maliciously tear, burn, efface, cut, or in any other way destroy any deed, lease, bond, will, or any other writing sealed, or any bank bill or note, check, warrant, or certificate for the payment of money or other thing, or other security for the payment of money or the delivery of goods, or any certificate or other public security of this Territory or of the United States, or of any State or Territory, for the payment of money, or any receipt, acquittance, release, defeasance, discharge of any debt, suit, or other demand, or any transfer or assurance of money, stock, goods, chattels, or other property, or any letter of attorney or other power, or any day-book or other book of account, or any agreement or contract whatsoever, with intent to defraud, prejudice, or injure any person or body corporate, shall, upon conviction thereof, be punished by imprisonment in the Territorial prison for a term not less than one year nor more than five years.

SEC. 69. Every person who shall wilfully or maliciously remove any monuments of stone, wood, or other durable material, erected for the purpose of designating the corner or any other point in the boundary of any lot or tracts of land, or any post or stake fixed or driven in the ground for the purpose of designating a point in the boundary of any lot or tract of land, or alter the marks upon any tree, post, or other monument made for the purpose of designating any point, course, or line in the boundary of any lot or tract of land, or shall cut down or remove any tree upon which any such marks shall be made for such purpose, with the intent to destroy such marks, shall, upon conviction, be adjudged guilty of a misdemeanor, and punished by fine not less than one hundred nor more than two thousand dollars, or by imprisonment in the county jail not less than one month, nor more than one year.

SEC. 70. If any clerk, apprentice, or servant, or other person, whether bound or hired, to whom any money, or goods, or chattels, or property, shall be entrusted by his master or employer, shall withdraw himself from his master or employer, and go away with the said money, goods, chattels, or property, or any part thereof, with the intent to steal the same and defraud his master or employer thereof, contrary to the trust or confidence in him reposed by his said master or employer, or, being in the service of his said master or employer, shall embezzle the said moneys, goods, chattels, or property, or any part thereof, or otherwise shall convert the same to his own use with like purpose to steal the same, every such person so offending shall be punished in the manner prescribed by law for feloniously stealing property of the value of the articles so taken, embezzled, or converted.

SEC. 71. If any bailee of any money, goods, or property, shall convert the same to his own use with intent to steal the same, he shall be deemed guilty of grand or petit larceny, according to the amount of the money or value of the goods, chattels, or property so converted, in the same manner as if the original taking had been felonious, and on conviction thereof shall be punished accordingly.

SEC. 72. If any lodger shall take away with intent to steal, embezzle, or purloin, any bedding, furniture, goods, or chattels which he is to use in or with his lodging, he shall be deemed guilty of grand or petit larceny, according to the value of the property so taken, and on conviction shall be punished accordingly.

EIGHTH DIVISION.

Forgery and Counterfeiting.

SEC. 73. Every person who shall falsely make, alter, forge, or counterfeit any record or other authentic matter of a public nature; or any charter, letters patent, deed, lease, indenture, writing obligatory, will, testament, codicil, annuity, bond, covenant, bank bill, or note, post note, check, draft, bill of exchange, contract, promissory note, due bill, for the payment of money or property, receipt for money or property, power of attorney; any warrant for the payment of money at the treasury, county order or warrant, or request for the payment of money or the delivery of goods or chattels of any kind; or for the delivery of any instrument of writing, or acquittance, release, or receipt for money or goods; or any acquittance, release, or discharge for any debt, account, suit, action, demand, or other thing real or personal; or any transfer or assurance of money, stock, goods, chattels, or other property whatever; or any letter of attorney, or other power to receive money, or to receive or transfer stock or annuities; or to let, lease, dispose of, alien, or convey any goods or chattels, lands or tenements, or other estate, real or personal; or any acceptance or endorsement of any bill of exchange, promissory note, draft, order, or assignment of any bond, writing obligatory, or promissory note for money or other property; or shall counterfeit or forge the seal or hand-writing of another, with intent to damage and defraud any person or persons, body politic or corporate, whether the said person or persons, body politic or corporate, reside in or belong to this Territory or not; or shall utter, publish, pass, or attempt to pass as true and genuine, any of the above-named false, altered, forged, or counterfeited matters, as above specified and described, knowing the

same to be false, altered, forged, or counterfeited, with intent to prejudice, damage, or defraud any person or persons, body politic or corporate, whether the said person or persons, body politic or corporate, reside in this Territory or not—every person so offending shall be deemed guilty of forgery, and upon conviction thereof shall be punished by imprisonment in the Territorial prison for a term not less than one year, nor more than fourteen years.

SEC. 74. Every person who shall counterfeit any of the species of gold or silver coin now current, or that shall hereafter be current in this Territory, or shall pass or give in payment such counterfeit coin, or permit, cause, or procure the same to be uttered or passed with intent to defraud any person, body politic, or corporate, knowing the same to be counterfeited, shall be deemed guilty of counterfeiting, and upon conviction thereof shall be punished by imprisonment in the Territorial prison for a term not less than one year nor more than fourteen years.

SEC. 75. Every person who shall have in his possession, or receive for any other person, any counterfeit gold or silver coin or coins of the species now current, or hereafter to be current in this Territory, with intention to utter or pass the same, or permit, cause, or procure the same to be uttered or passed, with intent to defraud any person or persons, body politic or corporate, knowing the same to be counterfeit, and being thereof duly convicted, shall be punished by imprisonment in the Territorial prison for a term not less than one year nor more than fourteen years.

SEC. 76. Every person who shall have in his possession or shall receive from any other person any forged promissory note or notes, or bank bills, or bills for the payment of money or property, with intent to pass the same, or to permit, cause, or procure the same to be uttered or passed, with intention to defraud any person or persons, body politic or corporate, whether such person or persons, body politic or corporate, reside in or belong to this Territory or not, knowing the same to be forged or counterfeited; or shall have or keep in his possession any blank or unfinished note or blank bill, made in the form or similitude of any promissory note or bill for payment of money or property, made to be issued by any incorporated bank or banking company, with intention to fill up and complete such blank and unfinished note or bill, or to permit, or cause, or procure the same to be filled up and completed in order to utter or pass the same, or to permit, or cause, or procure the same to be uttered and passed with intent to defraud any person or persons, body politic or corporate, whether in the Territory or elsewhere, shall, on conviction thereof, be punished by imprisonment in the Teritorial prison for a term not less than one nor more than fourteen years.

SEC. 77. Every person who shall make, pass, utter, or publish, with an intention to defraud any other person or persons, body politic or corporate, either in this Territory or elsewhere, or with the like intention shall attempt to pass, utter, or publish, or shall have in his possession, with like intent to utter, pass, or publish any fictitious bill, note, or check, purporting to be the bill, note. or check, or other instrument in writing for the payment of money or property, of some bank, corporation, copartnership, or individual, when in fact there shall be no such bank, corporation, copartnership, or individual in existence, the said person, knowing the said bill, note, check, or instrument in writing for the payment of money or property to be fictitious,

shall be deemed guilty of forgery, and on conviction thereof shall be punished by imprisonment in the Territorial prison for a term not less than one nor more than fourteen years.

SEC. 78. Every person who shall make or knowingly have in his possession any die or dies, plate or plates, or any apparatus, paper, metal, machine, or other thing whatever made use of in counterfeiting the coin now made current, or hereafter to be made current in this Territory, or in counterfeiting bank notes or bills, upon conviction thereof, shall be punished by imprisonment in the Territorial prison for a term not less than one nor more than fourteen years; and all such dies, plates, apparatus, paper, metal, or machine intended for the purpose aforesaid, shall be destroyed.

SEC. 79. On the trial of any person for forging any bill or note purporting to be the bill or note of some incorporated company or bank, or for passing or attempting to pass, or having in possession, with intent to pass, any such forged bill or note, it shall not be necessary to prove the incorporation of such bank or company by the charter or act of incorporation, but the same may be proved by general reputation.

SEC. 80. Persons of skill shall be competent witnesses to prove that such bill or note is forged or counterfeited.

SEC. 81. Every person who shall fraudulently forge or counterfeit the seal of this Territory, or the seal of any court or public officer by law entitled to have and use a seal, and shall make use of the same, or shall forge or counterfeit the signature of any public officer, or shall unlawfully and corruptly, and with evil intent, affix any of the said true seals to any commission, deed, warrant, pardon, certificate, or other writing, or who shall have in his possession or custody any such counterfeited seal, and shall wilfully conceal the same, knowing it to be falsely made and counterfeited, and shall thereof be convicted, shall be punished by imprisonment in the Territorial prison for a term not less than one nor more than fourteen years.

SEC. 82. That every person who shall knowingly and wilfully forge or counterfeit, or cause or procure to be forged or counterfeited, upon any goods, wares, or merchandises, the private stamps or labels of any mechanic or manufacturer, with intent to defraud the purchasers or manufacturers of any goods, wares, or merchandise whatsoever, shall, on conviction thereof, be deemed guilty of a misdemeanor, and shall be punished by imprisonment in the county jail, for a term not exceeding six months, or by a fine of not less than three hundred nor more than six hundred dollars.

SEC. 83. That any person who shall sell any goods, wares, or merchandise, having thereon any forged or counterfeit stamps or labels, purporting to be the stamps or labels of any mechanic or manufacturer, knowing the same to be forged or counterfeited, without disclosing the fact to the purchaser, shall, on conviction thereof, be deemed guilty of a misdemeanor, and shall be punished by imprisonment in the county jail for a term not exceeding six months, or by a fine of not less than three hundred dollars nor more than five hundred dollars.

NINTH DIVISION.

Crimes and Offences against Public Justice.

SEC. 84. Every person having taken a lawful oath, or made affirmation in any judicial proceeding, or in any other matter where by law an oath or affirmation is required, who shall swear or affirm wilfully, corruptly, and falsely, in a matter material to the issue or point in question, or shall suborn any other person to swear or affirm as aforesaid, shall be deemed guilty of perjury or subornation of perjury (as the case may be), and upon conviction thereof, shall be punished by imprisonment in the Territorial prison for any term not less than one nor more than fourteen years.

SEC. 85. Every person who, by wilful and corrupt perjury or subornation of perjury, shall procure the conviction and execution of any innocent person, shall be deemed and adjudged guilty of murder, and upon conviction thereof, shall suffer the punishment of death.

SEC. 86. If any person or persons shall, directly or indirectly, give any sum or sums of money, or other bribe, present, or reward, or any promise, contract, obligation, or security for the payment or delivery of any money, present, reward, or any other thing, to obtain or procure the opinion, judgment, or decree of any judge or justice of the peace acting within this Territory, or to corrupt, induce, or influence such judge or justice of the peace to be more favorable to one side than to the other in any suit, matter, or cause depending or to be brought before him or them, or shall, directly or indirectly, give any sum or sums of money, present, or reward, or any promise, contract, obligation, or security for the payment or delivery of any money, present, or reward, or other thing, to obtain, procure, or influence any member of the Legislature, or to incline, induce, or influence any such member of the Legislature to be more favorable to one side than to the other on any question, election, matter, or thing pending or to be brought before the Legislature or either house thereof, the person so giving any money, bribe, present, or reward, promise, contract, obligation, or security, with intent and for the purpose aforesaid, and the judge, justice of the peace, or member of the Legislature who shall accept or receive the same, shall be deemed guilty of bribery, and on conviction shall be punished by imprisonment in the Territorial prison for a term not less than one year, and shall be disqualified from holding any office of honor, trust, or profit in this Territory.

SEC. 87. If any person shall, directly or indirectly, give any sum or sums of money, or any other bribe, present, or reward, or any promise, contract, obligation, or security for the payment of any money, present, or reward, or any other thing, to any judge, justice of the peace, sheriff, coroner, clerk, constable, jailor, attorney-general, district or county attorney, member of the Legislature, or other officer, ministerial or judicial (but such fees as are allowed by law), with intent to induce or influence such officer to appoint any person to office or to execute any of the powers in him vested, or perform any duty of him required, with partiality or favor, or otherwise than is required by law, or in consideration that such officer hath appointed any person to any office, or exercised any power in him vested, or performed any duty of him required with partiality or favor, or otherwise contrary to law, the person so giving and the officer so receiving any money, bribe, present, reward, promise, contract, obligation, or security, with the intent

or for the purpose or consideration aforesaid, shall be deemed guilty of bribery, and on conviction thereof, shall be punished by imprisonment in the Territorial prison for a term not less than one year nor more than ten years, and shall be disqualified to hold any office of honor, trust, or profit, in this Territory.

SEC. 88. Every person who shall offer or attempt to bribe any member of the Legislature, judge, justice of the peace, sheriff, coroner, clerk, constable, jailor, attorney-general, district or county attorney, or other ministerial or judicial officer, in any of the cases mentioned in the two preceding sections; and every member of the Legislature, judge, justice of the peace, sheriff, coroner, clerk, constable, jailor, attorney-general, district or county attorney, or other ministerial or judicial officer, who shall propose or agree to receive a bribe in any of the cases mentioned in either of the two preceding sections, shall, on conviction, be fined in a sum not exceeding five thousand dollars, and shall be disqualified to hold any office of honor, trust, or profit in this Territory.

SEC. 89. If any judge, justice of the peace, sheriff, coroner, clerk, recorder, or other public officer, or any person whatsoever, shall steal, embezzle, corrupt, alter, withdraw, falsify or avoid any record, process, charter, gift, grant, conveyance, bond, or contract, or shall knowingly or wilfully take off, discharge, or conceal any issue, forfeited recognisance, or other forfeiture, or shall forge, deface, or falsify any document or instrument recorded, or any registered acknowledgment or certificate, or shall alter, deface, or falsify any minute, document, book, or any proceeding whatever of or belonging to any public office within this Territory, the person so offending, and being thereof duly convicted, shall be punished by imprisonment in the Territorial prison for a term not less than one nor more than ten years, and be fined in a sum not exceeding five thousand dollars.

SEC. 90. Every sheriff or jailor who shall be guilty of wilful inhumanity or oppression to any prisoner under his care or custody, shall be fined in any sum not exceeding two thousand dollars, and be removed from office.

SEC. 91. If any officer whose office shall be abolished by law, or who, after the expiration of the time for which he may be appointed or elected, or after he shall have resigned or been legally removed from office, shall wilfully and unlawfully withhold or detain from his successor, or other person entitled thereto by law, the records, papers, documents, or other writing appertaining or belonging to his office, or mutilate, destroy, or take away the same, the person so offending, shall, on conviction, be punished by imprisonment in the Territorial prison for a term not less than one year nor more than ten years. The provisions of this section shall apply to any person or persons who shall have such records, documents, papers, or other writings in his, her, or their possession, and shall wilfully mutilate, destroy, withhold, or detain the same as aforesaid.

SEC. 92. Every person who shall falsely represent or personate another, and in such assumed character shall marry another; become bail or surety for any party in any proceeding, civil or criminal, before any court or officer authorized to take such bail or surety; or confess any judgment; or acknowledge the execution of any conveyance of real estate, or of any other instrument which by law may be recorded; or do any other act in the

course of any suit, proceeding, or prosecution, whereby the person so represented or personated may be made liable in any event to the payment of any debt, damages, costs, or sums of money, or his rights or interests may in any manner be affected, shall, upon conviction, be punished by imprisonment in the county jail not exceeding two years, or by fine not exceeding five thousand dollars.

SEC. 93. Every person who shall falsely represent or personate another, and in such assumed character shall receive any money or valuable property of any description, intended to be delivered to the person so personated, shall, upon conviction, be punished in the same manner and to the same extent as for feloniously stealing the money or property so received.

SEC. 94. If any person shall knowingly and wilfully obstruct, resist, or oppose any sheriff, deputy-sheriff, coroner, constable, marshal, policeman, or other officer of this Territory, or other person duly authorized, in serving, or attempting to serve, any lawful process or order of any court, judge, or justice of the peace, or any other legal process whatsoever, or shall assault or beat any such officer or person duly authorized in serving, or executing, or attempting to serve or execute any order or process as aforesaid, or for having served or executed, or attempted to serve or execute the same, every person so offending shall be fined in any sum not exceeding five thousand dollars, and imprisoned in the Territorial prison for a term not exceeding five years: Provided, any officer or person whatsoever that may or shall assault or beat any individual, under color of his commission or authority, without lawful necessity so to do, shall, on conviction, suffer the same punishment.

SEC. 95. If any person or persons shall set at liberty or rescue any person who shall have been found guilty or convicted of a crime, the punishment of which is death, such person, on conviction thereof, shall be punished by imprisonment in the Territorial Prison for a term not less than one year nor more than fourteen years; and if any person or persons shall set at liberty or rescue any person who shall have been found guilty or convicted of a crime, the punishment of which is imprisonment in the Territorial prison, or in prison, the person so offending, on conviction thereof, shall be sentenced to the same punishment that would have been inflicted on the person so set at liberty or rescued.

SEC. 96. If any person shall set at liberty or rescue any person who, before conviction, stands charged or committed for any capital offence, or any crime punishable in the Territorial prison, such person so offending shall, on conviction, be fined in any sum not exceeding one thousand dollars, and imprisoned in the county jail not exceeding one year; and if the person rescued or set at liberty stands charged, committed, or convicted of any misdemeanor or other offence punishable by fine or imprisonment, or both, the person convicted of such rescue or setting at liberty, shall suffer the same punishment that would have been inflicted on the person rescued or set at liberty, if he or she had been found guilty.

SEC. 97. If any sheriff, deputy-sheriff, or jailor, or any person employed by them as a guard, shall fraudulently contrive, procure, aid, connive at, or otherwise voluntarily suffer the escape of any convict in custody, every such person, on conviction, shall be punished by imprisonment in the Territorial

prison for a term not exceeding ten years, and fined in a sum not exceeding five thousand dollars.

SEC. 98. If any person shall carry to any convict imprisoned or in custody, or into any county jail or other place where such convict may be confined, any tool, weapon, or other aid, with intent to enable such convict to escape such custody or confinement, whether such escape be effected or not, any person so offending, on conviction thereof, shall be punished by a fine not exceeding five thousand dollars, and imprisonment in the Territorial prison not exceeding five years.

SEC. 99. If any person or persons shall rescue another in legal custody on civil process, such person or persons shall, on conviction, be fined in any sum not exceeding one thousand dollars.

SEC. 100. If any person shall aid or assist a prisoner, lawfully imprisoned or detained in custody for any offence against this Territory, or who shall be lawfully confined by virtue of any civil process, to make his or her escape from imprisonment or custody, though no escape be actually made; or if any person shall convey or cause to be delivered to such prisoner any disguise, instrument, or arms proper to facilitate the escape of such prisoner, any person so offending (although no escape or attempt to escape be actually made), shall, on conviction, be punished by fine not exceeding five thousand dollars, and imprisonment in the county jail not exceeding two years.

SEC. 101. If any sheriff, coroner, jailor, keeper of a prison, constable, or other officer or person whatever, having any prisoner in his legal custody before conviction, shall voluntarily suffer or permit such prisoner to escape or go at large, every such officer or person so offending shall, on conviction, be fined in any sum not exceeding five thousand dollars, and imprisoned in the county jail for any time not exceeding five years: Provided that, if such prisoner be in custody charged with murder or other capital offence, then such officer or person suffering or permitting such escape, shall be punished by imprisonment in the Territorial prison, for any term not less than one year nor more than ten years. A negligent escape of a person charged with a criminal offence, before conviction, from the custody of any of the aforesaid officers, shall be deemed a misdemeanor, and punished by fine not exceeding five thousand dollars.

SEC. 102. If any sheriff, coroner, keeper of a jail, constable, or other officer, shall wilfully refuse to receive or arrest any person charged with a criminal offence, such sheriff, coroner, jailor, constable, or other officer so offending, shall, on conviction, be fined in any sum not exceeding five thousand dollars, and imprisoned in the county jail not exceeding five years.

SEC. 103. Every person having a knowledge of the actual commission of any offence punishable by imprisonment in a county jail, or by fine; or of any misdemeanor or violation of any statute for which any pecuniary or other penalty is or shall be prescribed; who shall take any money, property, gratuity, or reward, or any engagement or promise therefor, upon any agreement or understanding, express or implied, to compound or conceal any such offence or misdemeanor, or to abstain from any prosecution therefor, or to withhold any evidence thereof—shall, upon conviction, be fined

in any sum not exceeding five hundred dollars, or imprisonment in the county jail not more than six months: Provided, that this section shall not apply to those offences which may lawfully be compromised by leave of court.

SEC. 104. If two or more persons shall conspire either to commit any offence, or falsely and maliciously to indict another for any offence; or to procure another to be charged or arrested for any such offence; or falsely to move or maintain any suit; or to cheat or defraud any person of any property, by any means which, if executed, would amount to a cheat; or to obtain money or property by false pretences; or to cheat or defraud any person of any property, by any means which are in themselves criminal; or to commit any act injurious to the public health, to public morals, or to trade or commerce, or for the perversion or obstruction of justice, or due administration of the laws—they shall, on conviction, be punished by imprisonment in the county jail not more than one year, or by a fine not exceeding one thousand dollars.

SEC. 105. No conspiracies, other than those enumerated in the last section, are punishable criminally.

SEC. 106. No agreement, except to commit a felony upon the person of another, or to commit arson or burglary, shall be deemed a conspiracy, unless some act besides such agreement be done to effect the object thereof by one or more of the parties to such agreement.

SEC. 107. If any person shall take upon himself to exercise or officiate in any office or place of another in this Territory, without being lawfully authorized thereto, he shall, upon conviction, be fined in any sum not exceeding one thousand dollars.

SEC. 108. Embracy is an attempt to influence a juror or jurors corruptly to one side, by threats or menaces, or by promises, persuasions, entreaties, money, and the like. Every embracer who shall procure any juror to take money, property, or gain, or shall corruptly influence any juror by persuasion, promises, entreaties, or by any other improper means, or shall threaten or menace any juror, shall, on conviction, be fined in a sum not exceeding five thousand dollars, or imprisoned in the county jail not exceeding two years; and any juror convicted of taking money, gain, or profit, or corruptly being influenced as aforesaid, shall suffer the like imprisonment, and be for ever disqualified to act as a juror. This section shall apply as well to the grand as the trial jurors.

SEC. 109. If any judge, justice of the peace, sheriff, coroner, constable, clerk, or other officer of this Territory, ministerial or judicial, shall wilfully or corruptly receive, or take any fee or reward, to do or execute his duty as such officer, except such as is or shall be allowed by law; or if any such officer shall wilfully or corruptly ask or demand, as a condition precedent to the performance of his duty as such officer, any fee or reward, except such as shall be allowed by law, every such officer so offending, shall be deemed guilty of extortion, and on conviction, shall be fined in any sum not exceeding two hundred dollars.

SEC. 110. If any justice of the peace, or constable of the same precinct, shall, directly or indirectly, purchase any judgment, or part thereof, on the docket of such justice, or any docket in his possession, he shall, upon con-

viction thereof, be fined for each offence in any sum not less than one hundred dollars nor more than one thousand dollars.

SEC. 111. Every person holding or exercising any office under the laws of this Territory, who shall, for any reward or gratuity, paid or agreed to be paid, grant to another the right or authority to discharge any of the duties of such office, shall be deemed guilty of a misdemeanor, and on conviction, shall be fined in any sum not exceeding five thousand dollars, and shall forfeit his office and be disabled from holding such office; and every person who shall give, or make any agreement to give, any reward or gratuity in consideration of any such grant or deputation, shall, upon conviction, be fined in any sum not exceeding five thousand dollars.

SEC. 112. If any person shall knowingly send or deliver any letter or writing, threatening to accuse another of a crime or misdemeanor, or to expose or publish any of his infirmities or failures, with intent to extort money, goods, chattels, or other valuable things; or threatening to maim, wound, kill, or murder, or to burn or destroy his house or other property, or to accuse another of a crime or misdemeanor, or expose or publish any of his infirmities, though no money, goods, chattels, or valuable thing be demanded, such person so offending shall, on conviction, be fined in a sum not exceeding five hundred dollars, and imprisoned in the county jail not exceeding six months.

SEC. 113. Every person who shall wilfully open or read, or cause to be read, any sealed letter not addressed to himself, without being authorized so to do, either by the writer of such letter, or by the person to whom it shall be addressed; and every person who shall maliciously publish the whole or any part of such letter, without the authority of the writer thereof, or the person to whom the same shall be addressed, knowing the same to have been opened, shall, upon conviction, be punished by a fine not exceeding one thousand dollars.

TENTH DIVISION.

Offences against the Public Peace and Tranquillity.

SEC. 114. If any person, at late and unusual hours of the night time, shall maliciously and wilfully disturb the peace or quiet of any neighborhood or family by loud or unusual noises, or by tumultuous or offensive conduct, threatening, traducing, quarrelling, challenging to fight, or fighting, every person convicted thereof shall be fined in a sum not exceeding two hundred dollars, or imprisoned in the county jail not more than two months.

SEC. 115. If two or more persons assemble for the purpose of disturbing the public peace, or committing any unlawful act, and do not disperse on being desired or commanded so to do by a judge, justice of the peace, sheriff, coroner, constable, or other public officer, the persons so offending shall, on conviction, be severally fined in any sum not exceeding five hundred dollars, and imprisoned in the county jail not more than six months.

SEC. 116. If two or more persons shall by agreement fight in a public place, to the terror of the citizens of this Territory, the persons so offend-

ing shall be deemed guilty of an affray, and shall be severally fined in a sum not exceeding two hundred dollars, and imprisoned in the county jail not more than one month.

SEC. 117. If two or more persons shall assemble together to do an unlawful act, and separate without doing or advancing towards it, such persons shall be deemed guilty of an unlawful assembly, and upon conviction thereof, shall be severally fined in a sum not exceeding two hundred dollars, or imprisoned in the county jail not exceeding three months.

SEC. 118. If two or more persons shall meet to do an unlawful act upon a common cause of quarrel, and make advances towards it, they shall be deemed guilty of a rout, and on conviction, shall be severally fined in a sum not exceeding five hundred dollars, or imprisoned in the county jail not more than six months.

SEC. 119. Every person who shall wilfully disquiet or disturb any congregation or assembly of people, met for religious worship, by making a noise, or by rude or indecent behavior, or profane discourse within their place of worship, or so near to the same as to disturb the order or solemnity of the meeting, or menace, threaten, or assault any person there being, shall be deemed guilty of a misdemeanor, and punished by a fine not exceeding five hundred dollars, or by imprisonment in the county jail not exceeding three months.

SEC. 120. Every person who shall erect or keep a booth, tent, stall, or other contrivance, for the purpose of selling or otherwise disposing of any wine or spirituous or fermented liquors, or any drink of which wine, spirituous, or fermented liquors form a part, within one mile of any camp or field-meeting for religious worship, during the time of holding such meeting, shall be deemed guilty of a misdemeanor, and punished by fine not exceeding five hundred dollars.

SEC. 121. If any judge, justice of the peace, sheriff, or other officer, bound to preserve the public peace, shall have knowledge of an intention on the part of any two persons to fight with any deadly weapon or weapons, and such officer shall not use and exert his official authority to arrest the parties and prevent the duel, every such officer shall be fined in a sum not exceeding one thousand dollars.

SEC. 122. A libel is a malicious defamation, expressed either by printing, or by signs or pictures, or the like, tending to blacken the memory of one who is dead, or to impeach the honesty, integrity, virtue, or reputation, or publish the natural defects of one who is alive, and thereby to expose him or her to public hatred, contempt, or ridicule; every person, whether the writer or publisher, convicted of the offence, shall be fined in a sum not exceeding five thousand dollars, or imprisonment in the county jail not exceeding one year. In all prosecutions for libel, the truth may be given in evidence to the jury, and if it shall appear to the jury that the matter charged as libellous is true, and was published with good motives, and for justifiable ends, the party shall be acquitted, and the jury shall have the right to determine the law and the fact.

ELEVENTH DIVISION.

Offences against Public Morality, Health, and Police.

SEC. 123. Bigamy consists in the having of two wives or two husbands at one and the same time, knowing that the former husband or wife is still alive. If any person or persons within this Territory, being married, or who shall hereafter marry, do at any time marry any person or persons, the former husband or wife being alive, the person so offending shall, on conviction thereof, be punished by fine not exceeding one thousand dollars, and be imprisoned in the county jail not more than two years. It shall not be necessary to prove either of the said marriages by the register or certificate thereof, or other record evidence, but the same may be proved by such evidence as is admissible to prove a marriage in other cases, and when such second marriage shall have taken place without this Territory, cohabitation in this Territory, after such second marriage, shall be deemed the commission of the crime of bigamy. Nothing herein contained shall extend to any person or persons whose husband or wife shall have been continually absent from such person or persons for the space of five years together, prior to the second marriage, and he or she not knowing such husband or wife to be living within that time. Also, nothing herein contained shall extend to any person that is, or shall be at the time of such second marriage, divorced by lawful authority from the bonds of such former marriage, or to any person where the former marriage hath been, by lawful authority, declared void.

SEC. 124. If any man or woman, being unmarried, shall knowingly marry the husband or wife of another, such man or woman shall, on conviction, be fined not less than one thousand dollars, or imprisoned in the county jail not more than two years.

SEC. 125. Persons being within the degrees of consanguinity, within which marriages are declared by law to be incestuous and void, who shall intermarry with each other, or who shall commit fornication or adultery with each other, shall, on conviction, be punished by imprisonment in the Territorial prison not exceeding ten years.

SEC. 126. If any person shall obstruct or injure, or cause or procure to be obstructed or injured, any public road or highway, or common street or alley of any city, town, or village, or any public bridge or causeway, or public river or stream declared navigable by law, or shall continue such obstruction so as to render the same inconvenient or dangerous to pass, or shall erect or establish any offensive trade, manufacture, or business, or continue the same after it has been erected or established, or shall in anywise pollute or obstruct any water-course, lake, pond, marsh, or common sewer, or continue such obstruction or pollution so as to render the same offensive or unwholesome to the county, city, town, village, or neighborhood thereabouts; every person so offending shall, upon conviction, be fined not exceeding one thousand dollars; and every such nuisance may, by order of the district court, be removed and abated by the sheriff of the county.

SEC. 127. If any person or persons shall knowingly sell any flesh of any diseased animal, or other unwholesome provisions, or any poisonous or adulterated drink or liquors, every person so offending shall be fined not

more than five hundred dollars, or imprisoned in the county jail not more than six months.

SEC. 128. If any person shall intentionally deface, obliterate, tear down or destroy, in whole or in part, any copy or transcript, or extract from or of any law of the United States, or of this Territory, or any proclamation, advertisement, or notification set up at any place in this Territory by authority of any law of the United States or of this Territory, or by order of any court, such person, on conviction, shall be fined not more than one hundred dollars, or less than twenty dollars, or be imprisoned in the county jail not more than one month: Provided, that this section shall not extend to defacing, tearing down, obliterating or destroying any law, proclamation, publication, notification, advertisement, or order, after the time for which the same was by law to remain set up, shall have expired.

SEC. 129. If any person shall be found having upon him or her any pick-lock, crow, key-bitt, or other instrument or tool, with intent feloniously to break and enter into any dwelling-house, store, shop, warehouse, or other building containing valuable property, or shall be found in any of the aforesaid buildings with intent to steal any money, goods, and chattels, every person so offending shall, on conviction thereof, be imprisoned in the county jail not more than two years; and if any person shall have upon him any pistol, gun, knife, dirk, bludgeon, or other offensive weapon, with intent to assault any person, every such person, on conviction, shall be fined not more than one hundred dollars or imprisoned in the county jail not more than three months.

SEC. 130. Every male person above eighteen years of age who shall neglect or refuse to join the "*posse comitatus*" or power of the county, by neglecting or refusing to aid and assist in taking or arresting any person or persons against whom there may be issued any process, or by neglecting to aid and assist in retaking any person or persons, who, after being arrested or confined, may have escaped from such arrest or imprisonment, or by neglecting or refusing to aid and assist in preventing any breach of the peace, or the commission of any criminal offence, being thereto lawfully required by any sheriff, deputy-sheriff, coroner, constable, judge, or justice of the peace, or other officer concerned in the administration of justice, shall, upon conviction, be fined in any sum not less than fifty dollars nor more than one thousand dollars.

TWELFTH DIVISION.

Offences committed by Cheats, Swindlers, and other Fraudulent Persons.

SEC. 131. All and every person who shall be a party to any fraudulent conveyance of any lands, tenements, or hereditaments, goods or chattels, or any right or interest issuing out of the same, or to any bond, suit, judgment or execution, contract or conveyance had, made, or contrived with intent to deceive and defraud others, or to defeat, hinder, or delay creditors or others of their just debts, damages, or demands, or who, being parties as aforesaid, at any time shall wittingly put in, use, avow, maintain, justify, or defend the same or any of them as true and done, had or made in good faith, or upon good consideration, or shall alien, assign, or sell any of the lands, tenements, hereditaments, goods, chattels, or other things

before mentioned, to him, her, or them conveyed as aforesaid, or any part thereof, he, she, or they so offending shall, on conviction, be fined in any sum not exceeding one thousand dollars.

SEC. 132. If any person, by false representations of his own wealth or mercantile correspondence and connexions, shall obtain a credit thereby, and defraud any person or persons of money, goods, chattels, or any valuable thing; or if any person shall cause or procure others to report falsely of his wealth or mercantile character, and by thus imposing upon any person or persons, obtain credit, and thereby fraudulently get into possession of goods, wares, or merchandise, or other valuable things, every such offender shall be deemed a swindler, and on conviction, shall be sentenced to return the property so fraudulently obtained, if it can be done, and shall be fined not exceeding one thousand dollars, and imprisoned in the county jail not more than six months.

SEC. 133. If any person or persons shall knowingly and designedly, by any false pretence or pretences, obtain from any other person or persons any chose in action, money, goods, wares, chattels, effects, or other valuable thing, with intent to cheat or defraud any such person or persons of the same, every person so offending shall be deemed a cheat, and on conviction shall be fined not exceeding one thousand dollars and imprisoned in the county jail not more than one year, and be sentenced to restore the property so fraudulently obtained, if it can be done.

SEC. 134. Any person or persons, after once selling, bartering, or disposing of any tract or tracts of land, town lot or lots, or executing any bond or agreement for the sale of any lands, or town lot or lots, who shall again knowingly and fraudulently sell, barter, or dispose of the same tract or tracts of land, or town lot or lots, or any part thereof, or shall knowingly and fraudulently execute any bond or agreement to sell or barter or dispose of the same land, or lot or lots, or any part thereof, to any other person or persons for a valuable consideration, every such offender, upon conviction thereof, shall be punished by imprisonment in the Territorial prison not less than one nor more than ten years.

SEC. 135. If any person shall knowingly sell any goods, wares, merchandise, or any valuable thing, by false weights or measures, or shall knowingly use false measures at any mill in taking toll or payment for grinding corn, wheat, rye, or other grain, he or she shall be deemed a common cheat, and on conviction shall be fined not exceeding two hundred dollars, and imprisoned in the county jail not more than three months.

SEC. 136. If any debtor shall fraudulently remove his property or effects out of this Territory, or shall fraudulently sell, convey, or assign, or conceal his property or effects, with intent to defraud, hinder, or delay his creditors of their just rights, claims, or demands, he shall, on conviction, be punished by imprisonment in the county jail for any term not exceeding one year, or by a fine not exceeding five thousand dollars, or by both such fine and imprisonment: Provided, this section shall not extend to property exempt from execution or other final process of a court.

SEC. 137. Any person against whom an action is pending, or against whom a judgment has been rendered for the recovery of any personal property or effects, who shall fraudulently conceal, sell, or dispose of such

property or effects, with intent to hinder, delay, or defraud the person bringing such action or recovering such judgment, or shall with such intent remove such property or effects beyond the limits of the county in which it may be at the time of the commencement of such action or the rendering of such judgment, shall, on conviction, be punished as provided in the next preceding section.

THIRTEENTH DIVISION.

Fraudulent and Malicious Mischief.

SEC. 138. Every person who shall wilfully administer any poison to any cattle, or maliciously expose any poisonous substance with the intent that the same shall be taken or swallowed by any cattle, shall, upon conviction, be punished by imprisonment in the county jail not exceeding three years, or by fine not exceeding five hundred dollars, or by both such fine and imprisonment.

SEC. 139. Every person who shall maliciously kill, maim, or wound any horse, ox, or other cattle, or any sheep belonging to another, or who shall maliciously or cruelly beat or torture any such animal, whether belonging to himself or another, shall, upon conviction, be punished by fine of not more than five hundred dollars, or by imprisonment in the county jail not exceeding six months.

SEC. 140. Every person who shall wilfully, unlawfully, and maliciously break, destroy, or injure the door-window of any dwelling-house, shop, store, or other house or building, or sever therefrom, or from any gate, fence, or inclosure, or any part thereof, any material of which it is formed; or sever from the freehold any produce thereof, or anything attached thereto; or pull down, injure, or destroy any gate, post, railing, or fence, or any part thereof; or cut down, lap, girdle, or otherwise injure or destroy any fruit or ornamental or shade tree, being the property of another—shall, on conviction, be fined not more than two hundred dollars, or imprisoned in the county jail not exceeding six months.

SEC. 141. Every person who shall wilfully and maliciously burn, injure, or destroy any pile or raft of wood, plank, boards, or other lumber, or any part thereof, or cut loose or set adrift any such raft, or part thereof, or shall cut, break, injure, sink, or set adrift any boat, canoe, skiff, or other vessel or water craft, being the property of another, shall, on conviction thereof, be punished by fine not exceeding five hundred dollars, or imprisonment in the county jail not exceeding six months.

SEC. 142. Every person who shall wilfully and maliciously cut, break, injure, or destroy any bridge, mill, dam, canal, flume, aqueduct, reservoir, or other structure erected to create hydraulic power, or to conduct water, for mining, manufacturing, or agricultural purposes, or any embankment necessary to the same, or either of them; or shall wilfully and maliciously make, or cause to be made, any aperture in such dam, canal, flume, reservoir, embankment, or structure, with intent to injure or destroy the same—shall, on conviction thereof, be fined in any sum not more than one thousand dollars, or imprisonment at hard labor in the Territorial prison not more than two years, or both such fine and imprisonment.

SEC. 143. If any person shall wilfully and intentionally break down, pull down, or otherwise destroy or injure, in whole or in part, any public jail or other place of confinement, every person so offending shall, on conviction, be fined in any sum not exceeding ten thousand dollars, nor less than the value of said jail or other place of confinement so destroyed, or of such injury as may have been done thereto by such unlawful act, and be imprisoned in the Territorial prison for any term not exceeding five years.

SEC. 144. If any person or persons shall wilfully and intentionally, or negligently and carelessly, set on fire, or cause or procure to be set on fire any wood, prairies, grass, or other lands or grounds in this Territory, every person so offending shall, on conviction before any court of competent jurisdiction, be fined in any sum not less than two hundred nor more than one thousand dollars, or by imprisonment in the county jail not less than ten days nor more than six months, or by both such fine and imprisonment in the discretion of the jury trying the case: Provided, that this section shall not extend to any person or persons who shall set on fire any wood, prairies, grass, or other lands adjoining their own farm, house, plantation, or inclosure, for the necessary preservation thereof from accident or injury by fire, by giving to his, her, or their neighbors reasonable notice of such intention.

FOURTEENTH DIVISION.

General Provisions.

SEC. 145. Every offence or act which by common law is declared to be a misdemeanor, and for which no punishment is especially prescribed, shall be punished by imprisonment in the county jail not exceeding six months, or by fine not exceeding five hundred dollars, or by both such fine and imprisonment.

SEC. 146. Until a Territorial prison is provided, the county jail of each county shall be deemed a Territorial prison.

SEC. 147. A sentence of imprisonment in the Territorial prison for a term less than life suspends all civil rights of the person so sentenced during the term of imprisonment, and forfeits all public offices, and all private trusts, authority, and power; and the person sent to such imprisonment for life shall thereafter be deemed civilly dead.

SEC. 148. Where the term "person" is used in this chapter to designate the party whose property may be the subject of any offence, such term shall be construed to include the United States, this Territory, or any other State or Territory, government or county, which may lawfully own any property within this Territory, and all public and private corporations as well as individuals.

SEC. 149. The provisions of this chapter shall extend to females.

SEC. 150. When any intent to injure, defraud, or cheat, is required by law to be shown in order to constitute any offence, it shall be sufficient if such intent be to injure, defraud, or cheat the United States, this Territory, or any other State, Territory, or county, or the government or any public office

thereof, or any county, city, or town, or any corporation, body politic, or private individual.

CHAPTER XI.

Of Proceedings in Criminal Cases.

SEC. 1. This chapter is divided into seven parts:

1st. The first embraces general definitions and provisions.
2d. The second relates to the prevention of public offences.
3d. The third relates to proceedings for the removal of public officers, by impeachment or otherwise.
4th. The fourth relates to proceedings in criminal actions prosecuted by indictment.
5th. The fifth relates to proceedings in justices', recorders', and mayors' courts.
6th. The sixth relates to special proceedings.
7th. The seventh relates to costs in criminal proceedings.

PART I.

General Definitions and Provisions.

SEC. 2. A crime or public offence is an act or omission forbidden by law, and to which is annexed, upon conviction, either of the following punishments: 1st. Death; 2d. Imprisonment; 3d. Fine; 4th. Removal from office; or, 5th. Disqualification to hold or enjoy any office of honor, trust, or profit under this Territory.

SEC. 3. Public offences are divided into, 1st. Felonies; and 2d. Misdemeanors.

SEC. 4. A felony is a public offence punishable by death, or by imprisonment in a Territorial prison.

SEC. 5. Every other public offence is a misdemeanor.

SEC. 6. No person can be punished for a public offence, except upon legal conviction in a court having jurisdiction thereof.

SEC. 7. Every public offence must be prosecuted by indictment, except: 1st. Where proceedings are had for the removal of civil officers of the Territory; 2d. Offences arising in the militia when in actual service, and in the land and naval forces in time of war, or which this Territory may keep with the consent of Congress in time of peace; 3d. Offences tried in justices', recorders', and mayors' courts.

SEC. 8. The proceedings by which a party charged with a public offence is accused and brought to trial and punishment, shall be known as a criminal action.

SEC. 9. A criminal action shall be prosecuted in the name of the Territory of Arizona as a party, against the party charged with the offence.

SEC. 10. The party prosecuted in a criminal action is designated in this chapter as the defendant.

SEC. 11. In a criminal action the defendant is entitled: 1st. To a speedy and public trial; 2d. To be allowed counsel, as in civil actions, or he may appear and defend in person or with counsel; and, 3d. To produce witnesses on his behalf, and to be confronted with the witnesses against him in the presence of the court, except that where the charge has been preliminarily examined before a committing magistrate, and the testimony taken down by question and answer in the presence of the defendant, who has either in person or by counsel cross-examined, or had an opportunity to cross-examine, the witnesses; or where the testimony of a witness on the part of the Territory, who is unable to give security for his appearance, has been taken conditionally in the like manner in the presence of the defendant, who has either in person or by counsel cross-examined, or had an opportunity to cross-examine, the witness, the deposition of such witness may be read upon its being satisfactorily shown to the court that he is dead or insane, or cannot with due diligence be found within the Territory.

SEC. 12. No person shall be subject to a second prosecution for a public offence, for which he has once been prosecuted and duly convicted or acquitted.

SEC. 13. No person shall be compelled in a criminal action to be a witness against himself, nor shall a person charged with a public offence be subjected before conviction to any more restraint than is necessary for his detention to answer the charge.

SEC. 14. No person can be convicted of a public offence, unless by a verdict of a jury accepted and recorded by the court, or upon a plea of guilty, or upon judgment against him upon a demurrer to the indictment in the case, mentioned in this chapter.

PART II.

Of the Prevention of Public Offences.—Of Lawful Resistance.

SEC. 15. Lawful resistance to the commission of a public offence may be made: 1st. By the party about to be injured; 2d. By other parties.

SEC. 16. Resistance sufficient to prevent the offence may be made by the party about to be injured: 1st. To prevent an offence against his person, or his family, or some member thereof; 2d. To prevent an illegal attempt by force to take or injure property in his lawful possession.

SEC. 17. Any other person in aid or defence of the person about to be injured, may make resistance sufficient to prevent the offence.

Of the Intervention of the Officers of Justice.—Intervention of Public Officers generally.

SEC. 18. Public offences may be prevented by the intervention of the

officers of justice: 1st. By requiring security to keep the peace; 2d. By forming a police in cities and villages, and by requiring their attendance in exposed places; 3d. By suppressing riots.

SEC. 19. Whenever the officers of justice are authorized to act in the prevention of public offences, other persons, who by their command act in their aid, are justified in so doing.

Security to Keep the Peace.

SEC. 20. A complaint may be laid before any of the magistrates mentioned in section eighty-four, that a person has threatened to commit an offence against the person or property of another.

SEC. 21. When the complaint is laid before the magistrate, he shall examine on oath the complainant, and any witnesses he may produce, and shall take their depositions in writing and cause them to be subscribed by the parties making them.

SEC. 22. If it appears from the depositions that there is just reason to fear the commission of the offence threatened by the person so complained of, the magistrate shall issue a warrant, directed generally to the sheriff of the county, or any constable, marshal, or policeman in the Territory, reciting the substance of the complaint, and commanding the officer forthwith to arrest the person complained of, and bring him before the magistrate.

SEC. 23. When the person complained of is brought before the magistrate, if the charge be controverted, the magistrate shall take testimony in relation thereto. The evidence must be reduced to writing, and subscribed by the witnesses.

SEC. 24. If it appear that there is no just reason to fear the commission of the offence alleged to have been threatened, the person complained of shall be discharged.

SEC. 25. If, however, there be just reason to fear the commission of the offence, the person complained of may be required to enter into a bond in such sum, not exceeding five thousand dollars, as the magistrate may direct, with one or more sufficient sureties, to keep the peace towards this Territory, and particularly towards the complainant. The bond shall be valid and binding for six months, and may, upon the renewal of the complaint, be extended for a longer period, or a new bond may be required.

SEC. 26. If the bond required by the last section be given, the party complained of shall be discharged. If he do not give it, the magistrate shall commit him to prison, specifying in the warrant the requirement to give security, the amount thereof, and the omission to give the same.

SEC. 27. If the person complained of be committed for not giving the bond required, he may be discharged by any magistrate upon giving the same.

SEC. 28. A bond given, as provided in section twenty-five, must be filed by the magistrate in the office of the district clerk of the county.

SEC. 29. Any person who, in the presence of a court or magistrate, shall assault, or threaten to assault another, or to commit any offence against his person or property, or who shall contend with another with angry words, may be ordered by the court or magistrate to give security, as is provided in section twenty-fifth, or, if he refuse to do so, may be committed as provided in section twenty-sixth.

SEC. 30. A bond to keep the peace shall be broken on conviction of the person complained against of a breach of the peace.

SEC. 31. Upon the attorney-general producing evidence of such conviction to the district court of the county, the court shall order the bond to be prosecuted, and the attorney-general shall thereupon commence an action on the same, in the name of this Territory.

SEC. 32. In the action, the offence stated in the record of conviction shall be alleged as a breach of the bond, and shall be conclusive evidence thereof.

SEC. 33. No security to keep the peace or be of good behavior shall be required, except as prescribed in this chapter.

Police in Cities and Towns, and their Attendance at exposed Places.

SEC. 34. The organization and regulation of the police in cities and villages in this Territory, are governed by special laws.

SEC. 35. The mayor or other officer having the direction of the police in a city or village, shall order a force sufficient to keep the peace to attend any public meeting, when he is satisfied that a breach of the peace is to be apprehended.

Suppression of Riots.

SEC. 36. When a sheriff or other public officer authorized to execute process, shall find or have reason to apprehend that resistance will be made to the execution of his process, he may command as many male inhabitants of his county as he may think proper, and any military company or companies in the county, armed and equipped, to assist him in overcoming the resistance, and, if necessary, in seizing, arresting, and confining the resisters, and their aiders and abettors, to be punished according to law.

SEC. 37. The officer shall certify to the court from which the process issued, the names of the resisters, and their aiders and abettors, to the end that they may be proceeded against for their contempt of court.

SEC. 38. Every person commanded by a public officer to assist him in the execution of process as provided in section thirty-six, who shall without lawful cause refuse or neglect to obey the command, shall be deemed guilty of a misdemeanor.

SEC. 39. If it appear to the governor that the power of any county is not sufficient to enable the sheriff to execute process delivered to him, he shall, on the application of the sheriff, order such military force from any other county or counties as shall be necessary.

SEC. 40. Where six or more persons, whether armed or not, shall be unlawfully or riotously assembled in any city, village, or place, the sheriff of the county and his deputies, the president or trustees of any village, or judge of any court of record, or the constable of the precinct and the justice of the peace, shall go among the persons so assembled, or as near to them as possible, and shall command them in the name of the Territory immediately to disperse.

SEC. 41. If the persons assembled do not immediately disperse, the magistrates and officers shall arrest them, that they may be punished according to law; and for that purpose may command the aid of all persons present or within the county.

SEC. 42. If a person so commanded to aid the magistrates or officers neglect or refuse to do so, he shall be deemed guilty of a misdemeanor and shall be punished accordingly.

SEC. 43. If a magistrate or officer, having notice of an unlawful or riotous assembly, as provided in section forty, neglect to proceed to the place of assembly, or as near thereto as he can with safety, and to exercise the authority with which he is invested for suppressing the same and arresting the offenders, he shall be deemed guilty of a misdemeanor.

SEC. 44. If the persons so assembled and commanded to disperse, do not immediately disperse, any two of the magistrates or officers before mentioned may command the aid of a sufficient number of persons, and may proceed in such manner as in their judgment is necessary to disperse the assembly and arrest the offenders.

SEC. 45. When an armed force is called out for the purpose of suppressing an unlawful or riotous assembly, or arresting the offenders, it shall obey such orders in relation thereto as may have been made by the governor, or by a judge of a court of record, or the sheriff of the county, or by any two of the magistrates or officers mentioned in section forty.

SEC. 46. When there is an unlawful or riotous assembly, with the intent to commit a felony, or to offer violence to person or property, or to resist by force the laws of the Territory, and the fact is made to appear to the governor, or to the judge of the supreme or district court, or to the sheriff of the county, either of those officers may issue an order directed to the commanding officer of a military company or companies, to order his command or any part thereof (describing the kind and number of troops) to appear at a time and place therein specified, to aid the civil authorities in suppressing violence and enforcing the laws.

SEC. 47. The commanding officer to whom the order is given shall forthwith obey the same, and the troops so required shall appear at the time and place appointed, armed and equipped with ammunition as per inspection, and shall execute any order that they shall then and there receive according to law.

SEC. 48. When the governor shall be satisfied that the execution of civil or criminal process has been forcibly resisted in any county by bodies of men, or that combinations to resist the execution of process by force exist in any county, and that the power of the county has been exerted, and has not been sufficient to enable the officer having the process to execute it, he may, on the application of the officer, or of the attorney-general, or district, or judge of probate of the county, by proclamation, to be published in such papers as he shall direct, declare the county to be in a state of insurrection, and may order into the service of the Territory such number and description of volunteer or uniform companies, or other militia of the Territory, as he shall deem necessary, to serve for such term and under the command of such officer or officers as he shall direct.

SEC. 49. The governor may, when he shall think proper, revoke the proclamation authorized by the last section, or declare that it shall cease at such time and in such manner as he shall direct.

SEC. 50. Any person who shall, after the publication of the proclamation authorized by section forty-eight, resist, or aid in resisting, the execution of process, in any county so declared to be in a state of insurrection, or who shall aid or attempt the rescue or escape of any person from lawful custody or confinement, or who shall resist, or aid in resisting, any force ordered out by the governor to quell or suppress an insurrection, shall be imprisoned in a Territorial prison for a term not less than two years.

Of the Removal of Civil Officers otherwise than by Impeachment.

SEC. 51. An accusation in writing against any district, county, or township officer, for wilful or corrupt misconduct in office, may be presented by the grand jury of the county for which the officer accused is elected or appointed.

SEC. 52. The accusation shall state the offence charged in ordinary and concise language, and without repetition.

SEC. 53. The accusation shall be delivered by the foreman of the grand jury to the attorney-general, who shall cause a copy thereof to be served upon the defendant, and require by notice in writing of not less than ten days, that he appear before the district court of the county at the next term, and answer the accusation. The original accusation shall then be filed with the clerk of the district court.

SEC. 54. The defendant must appear at the time appointed in the notice and answer the accusation, unless for some sufficient cause the court assign another day for that purpose. If he do not appear, the court may proceed to hear and determine the accusation in his absence.

SEC. 55. The defendant may answer the accusation, either by objecting to the sufficiency thereof, or of any article therein, or by denying the truth of the same.

SEC. 56. If he object to the legal sufficiency of the accusation, the objection must be in writing, but need not be in any specific form, it being sufficient if it present intelligibly the grounds of the objection.

SEC. 57. If he deny the truth of the accusation, the denial may be oral and without oath, and shall be entered upon the minutes.

SEC. 58. If an objection to the sufficiency of the accusation be not sustained, the defendant shall be required to answer the accusation forthwith.

SEC. 59. If the defendant plead guilty, or refuse to answer the accusation, the court shall render judgment of conviction against him. If he deny the matters charged, the court shall immediately, or at such time as they may appoint, proceed to try the accusation.

SEC. 60. The trial shall be by a jury, and shall be conducted in all respects in the same manner as the trial of an indictment for a misdemeanor.

SEC. 61. The attorney-general and the defendant shall be respectively entitled to such process as may be necessary to enforce the attendance of witnesses, as upon a trial of an indictment.

SEC. 62. Upon a conviction the court shall immediately, or at such other time as they may appoint, pronounce judgment that the defendant be removed from office. But to warrant a removal, the judgment must be entered upon the minutes, assigning therein the cause of removal.

SEC. 63. From a judgment of removal an appeal may be taken to the supreme court, in the same manner as from a judgment in a civil action, but until such judgment be reversed, the defendant shall be suspended from his office. Pending the appeal, the office may be filled as in case of vacancy.

SEC. 64. The same proceedings may be had on like grounds for the removal of the attorney-general, except that the accusation shall be delivered to the district judge of the district, who shall thereupon appoint some one to act as prosecuting officer in the matter.

Of the Proceedings in Criminal Actions prosecuted by Indictment.

Of the Local Jurisdiction of Public Offences.

SEC. 65. Every person, whether an inhabitant of this Territory or any State or country, or of a Territory or district of the United States, shall be liable to punishment by the laws of this Territory for a public offence committed by him therein, except where it is by law cognizable exclusively in the courts of the United States.

SEC. 66. When the commission of a public offence commenced without the Territory is consummated within the boundaries thereof, the defendant shall be liable to punishment in this Territory, though he were without the Territory at the time of the commission of the offence charged: Provided, he consummated the offence through the intervention of an innocent or guilty agent without this Territory, or any other means proceeding directly from himself; and in such case the jurisdiction shall be in the county in which the offence is consummated.

SEC. 67. When an inhabitant or resident of this Territory shall, by any

previous appointment or engagement, fight a duel, or be concerned as a second therein, without the jurisdiction of this Territory, and in such a duel a wound shall be inflicted upon any person whereof he shall die within the Territory, the jurisdiction of the offence shall be in the county where the death shall happen.

SEC. 68. When a public offence is committed in part in one county, and in part in another, or the acts or effects thereof constituting or requisite to the consummation of the offence, occur in two or more counties, the jurisdiction shall be in either county.

SEC. 69. Where a public offence is committed on the boundary of two or more counties, or within five hundred yards thereof, the jurisdiction shall be within either county.

SEC. 70. Where an offence is committed within this Territory on board a vessel navigating a river, bay, or slue, or lying therein in the prosecution of her voyage, the jurisdiction shall be in any county through which the vessel is navigated in the course of her voyage, or in the county where the voyage shall terminate.

SEC. 71. The jurisdiction of an indictment for the crime of forcibly stealing, taking, or arresting any man, woman, or child, in the Territory, and carrying him or her into any other county, State, or Territory; or for forcibly taking or arresting any person or persons whomsoever, with a design to take him or her out of this Territory, without having established a claim according to the laws of the United States; or for hiring, persuading, enticing, decoying, or seducing by false promises, misrepresentations, and the like, any negro, mulatto, or colored person to go out of this Territory, to be taken or removed therefrom for the purpose and with the intent to sell such negro, mulatto, or colored person into slavery or involuntary servitude; or otherwise to employ him or her for his or her own use or the use of another, without the free will and consent of such negro, mulatto, or colored person—shall be in any county in which the offence is committed, or into or out of which the person upon whom the offence was committed may in the prosecution of the offence have been brought, or in which an act shall be done by the offender in instigating, procuring, promoting, aiding in, or being accessory to, the commission of the offence, or in abetting the parties therein concerned.

SEC. 72. When the offence either of bigamy or incest is committed in one county, and the defendant is apprehended in another, the jurisdiction shall be in either county.

SEC. 73. When property feloniously taken in one county by burglary, robbery, larceny, or embezzlement, has been brought into another, the jurisdiction of the offence shall be in either county. But if at any time before the conviction of defendant in the latter, he be indicted in the former county, the sheriff of the latter county shall, upon demand, deliver him to the sheriff of the former county, upon being served with a copy of the indictment, and upon receipt, endorsed thereon by the sheriff of the former county, of the body of the offender, and shall, on filing the copy of the indictment and receipt, be exonerated from all liability in respect to the custody of the offender.

SEC. 74. In the case of an accessary before or after the fact in the com-

mission of a public offence, the jurisdiction shall be in the county where the offence of the accessary was committed, notwithstanding the principal offence was committed in another county.

SEC. 75. When an act charged as a public offence is within the jurisdiction of another State or Territory, as well as of this Territory, conviction or acquittal thereof, in such State or Territory, shall be a bar to a prosecution therefor in this Territory.

SEC. 76. When an offence is within the jurisdiction of two or more counties, a conviction or acquittal thereof in one county shall be a bar to a prosecution or indictment therefor in another.

Of the Time of commencing Criminal Actions.

SEC. 77. There shall be no limitation of the time within which a prosecution for murder must be commenced. It may be commenced at any time after the death of the person killed.

SEC. 78. An indictment for any other felony than murder must be found within five years after its commission.

SEC. 79. An indictment for any misdemeanor must be found within two years after its commission.

SEC. 80. If, when the offence is committed, the defendant be out of the Territory, the indictment may be found within the term herein limited after his coming within the Territory; and no time during which the defendant is not an inhabitant of, or usually resident within the Territory, shall be a part of the limitation.

SEC. 81. An indictment is found within the meaning of this chapter when it is duly presented to the grand jury in open court, and there received and filed.

Of the Complaint and Proceedings thereon to the Commitment, Inclusive.

The Complaint.

SEC. 82. The complaint is the allegation made to a magistrate that a person has been guilty of some designated offence.

SEC. 83. A magistrate is an officer having power to issue a warrant for the arrest of a person charged with a public offence.

SEC. 84. The following persons are magistrates: 1st. The justices of the supreme court; 2d. The district judges; 3d. Justices of the peace; 4th. The recorders of cities; and, 5th. The mayors of cities, upon whom are conferred by law the powers of justices of the peace.

Warrant of Arrest.

SEC. 85. When a complaint is laid before a magistrate of the commission

of a public offence, triable within the county, he must examine on oath the complainant or prosecutor and any witnesses he may produce, and take their depositions in writing, and cause them to be subscribed by the parties making them.

SEC. 86. The deposition must set forth the facts stated by the prosecutor and his witnesses tending to establish the commission of the offence and the guilt of the defendant.

SEC. 87. If the magistrate be satisfied therefrom that the offence complained of has been committed, and that there is reasonable ground to believe that the defendant has committed it, he shall issue a warrant of arrest.

SEC. 88. A warrant of arrest is an order in writing in the name of the Territory, signed by a magistrate, commanding the arrest of the defendant, and may be substantially in the following form:

TERRITORY OF ARIZONA, COUNTY OF .

To any sheriff, constable, marshal, or policeman in this Territory, or the county of :

A complaint upon oath having been this day laid before me by A. B., that the crime of (designate it), has been committed, and accusing C. D. thereof, you are therefore commanded forthwith to arrest the above named C. D. and bring him before me at (naming the place), or in case of my absence or inability to act, before the nearest and most accessible magistrate in this county.

Dated at , this day of , 18 .

SEC. 89. The warrant must specify the name of the defendant, or if it be unknown to the magistrate, the defendant may be designated therein by any name. It must also state the time of issuing it, and the county, city, or village where it is issued, and be signed by the magistrate, with his name of office.

SEC. 90. The warrant must be directed to and executed by a peace officer.

SEC. 91. Peace officers are sheriffs of counties, and constables, marshals, and policemen of cities and villages respectively.

SEC. 92. A warrant may be directed generally to any sheriff, constable, marshal, or policeman in this Territory, and may be executed by any of those officers to whom it may be delivered.

SEC. 93. If the offence charged in the warrant be a felony, the officer making the arrest must take the defendant before the magistrate who issued the warrant, or some other magistrate of the same county, as provided in section eighty-eight.

SEC. 94. If the offence charged in the warrant be a misdemeanor, and the defendant be arrested in another county, the officer must, upon being so required by the defendant, bring him before a magistrate of such county, who shall admit the defendant to bail.

SEC. 95. On admitting the defendant to bail, the magistrate shall certify on the warrant the fact of his having done so, and deliver the warrant and recognizance to the officer having charge of the defendant. The officer shall forthwith discharge the defendant from arrest, and shall without delay deliver the warrant and recognizance to the clerk of the court at which the defendant is required to appear.

SEC. 96. On the admission of the defendant to bail, as provided in section ninety-four, or if bail be not forthwith given, the officer shall take the defendant before the magistrate who issued the warrant, or some other magistrate of the same county, as provided by the next section.

SEC. 97. When, by the preceding sections of this chapter, the defendant is required to be taken before the magistrate who issued the warrant, he may, if the magistrate be absent or unable to act, be taken before the nearest or most accessible magistrate in the same county. The officer shall, at the same time, deliver to the magistrate the warrant with his return, endorsed and subscribed by him.

SEC. 98. The defendant must in all cases be taken before the magistrate without unnecessary delay.

SEC. 99. If the defendant be brought before a magistrate in the same county other than the one who issued the warrant, the affidavits on which the warrant was granted, if the defendant insist upon an examination, shall be sent to such magistrate; or if they cannot be procured, the prosecutor and his witnesses shall be summoned to give their testimony anew.

SEC. 100. When a complaint is laid before a magistrate of the commission of a public offence, triable within some other county of this Territory, but showing that the defendant is in the county where the complaint is laid, the same proceedings shall be had as prescribed in this chapter, except that the warrant shall require the defendant to be taken before the nearest or most accessible magistrate of the county in which the offence is triable, and the depositions of the complainant or prosecutor, and of the witnesses who may have been produced, shall be delivered by the magistrate to the officer to whom the warrant is delivered.

SEC. 101. The officer who executes the warrant shall take the defendant before the nearest or most accessible magistrate of the county in which the offence is triable, and shall deliver to such magistrate the depositions and the warrant with his return endorsed thereon, and such magistrate shall proceed in the same manner as upon a warrant issued by himself.

SEC. 102. If the offence charged in the warrant, issued pursuant to section one hundred, be a misdemeanor, the officer shall, upon being so required by the defendant, take him before a magistrate of the county in which the said warrant is issued, who shall hold the defendant to bail, and immediately transmit the warrant, depositions, and recognizances, to the clerk of the court in which the defendant is required to appear.

Arrest by an Officer under Warrant.

SEC. 103. Arrest is the taking of a person into custody that he may be held to answer for a public offence.

SEC. 104. An arrest may be either: 1st. By a peace officer under a warrant; 2d. By a peace officer without a warrant; or, 3d. By a private person.

SEC. 105. Every person shall aid an officer in the execution of a warrant, if the officer require his aid, and be present and acting in its execution.

SEC. 106. If the offence charged be a felony, the arrest may be made on any day, and at any time of the day or night. If it be a misdemeanor, the arrest shall not be made at night, unless upon the direction of the magistrate endorsed upon the warrant.

SEC. 107. An arrest shall be made by an actual restraint of the person of the defendant, or by his submission to the custody of an officer.

SEC. 108. The defendant shall not be subjected to any more restraint than is necessary for his arrest and detention.

SEC. 109. The officer shall inform the defendant that he acts under the authority of the warrant, and shall also show the warrant if required.

SEC. 110. If, after notice of intention to arrest the defendant, he either flee or forcibly resist, the officer may use all necessary means to effect the arrest.

SEC. 111. The officer may break open any outer or inner door or window of a dwelling-house to execute the warrant, if, after notice of his authority and purpose, he be refused admittance.

SEC. 112. An officer may break open any outer or inner door or window of a dwelling-house, for the purpose of liberating a person who, having entered for the purpose of making an arrest, is detained therein, or when necessary for his own liberation.

Arrest by an Officer without a Warrant.

SEC. 113. A peace officer may, without a warrant, arrest a person: 1st. For a public offence committed or attempted in his presence; 2d. When a person arrested has committed a felony, although not in his presence; 3d. When a felony has in fact been committed, and he has reasonable cause for believing the person arrested to have committed it; 4th. On a charge made upon a reasonable cause of the commission of a felony by the party arrested.

SEC. 114. To make an arrest, as provided in the last section, the officer may break open any outer or inner door or window of a dwelling-house if, after notice of his office and purpose, he be refused admittance.

SEC. 115. He may also at night, without a warrant, arrest any person whom he has reasonable cause for believing to have committed a felony, and is justified in making the arrest, though it afterwards appear that felony had not been committed.

SEC. 116. When arresting a person without a warrant, the officer must inform him of his authority and the cause of the arrest, except when he

is in the actual commission of a public offence, or when he is pursued immediately after an escape.

SEC. 117. He may take before a magistrate any person who, being engaged in a breach of the peace, is arrested by a bystander and delivered to him.

SEC. 118. When a public offence is committed in the presence of a magistrate he may, by a verbal order, command any person to arrest the offender, and may thereupon proceed as if the offender had been brought before him on a warrant of arrest.

Arrest by a Private Person.

SEC. 119. A private person may arrest another: 1st. For a public offence committed or attempted in his presence; 2d. When the person arrested has committed a felony, although not in his presence; 3d. When a felony has been in fact committed, and he has reasonable cause for believing the person arrested to have committed it.

SEC. 120. He must, before making the arrest, inform the person to be arrested of the cause thereof, and require him to submit, except when he is in the actual commission of the offence, or when he is arrested on pursuit immediately after its commission.

SEC. 121. If the person to be arrested has committed a felony, and a private person, after notice of his intention to make the arrest, be refused admittance, he may break open any outer or inner door or window of a dwelling-house for the purpose of making the arrest.

SEC. 122. A private person who has arrested another for the commission of a public offence must, without unnecessary delay, take him before a magistrate, or deliver him to a peace officer.

Retaking after an Escape or Rescue.

SEC. 123. If a person arrested escape or be rescued, the person from whose custody he escaped or was rescued, may immediately pursue and retake him at any time and at any place within the Territory.

SEC. 124. To retake the person escaping or rescued, the person pursuing may, after notice of his intention and refusal of admittance, break open any outer or inner door or window of a dwelling-house.

Examination of the Case and discharge of the Defendant, or holding him to Answer.

SEC. 125. When the defendant is brought before the magistrate upon an arrest, either with or without warrant, on a charge of having committed a public offence, the magistrate shall immediately inform him of the charge against him, and of his right to the aid of counsel in every stage of the proceedings, and before any further proceedings are had.

SEC. 126. He shall also allow the defendant a reasonable time to send for counsel, and adjourn the examination for that purpose, and shall, upon the request of the defendant, require a peace officer to take a message to such counsel within the village, precinct, or city, as the defendant may name. The officers shall, without delay and without fee, perform that duty.

SEC. 127. The magistrate shall immediately, after the appearance of counsel, or if defendant require the aid of counsel, after waiting a reasonable time therefor, proceed to examine the case.

SEC. 128. The examination must be completed at one session, unless the magistrate for good cause shown adjourn it. The adjournment cannot be for more than two days at each time, nor more than six days in all, unless by consent or on motion of the defendant.

SEC. 129. If an adjournment be had for any cause, the magistrate shall commit the defendant for examination, admit him to bail, or discharge him from custody upon the deposit of money, as provided in this chapter, as security for his appearance at the time to which the examination is adjourned.

SEC. 130. The commitment for examination shall be by an endorsement signed by the magistrate on the warrant of arrest to the following effect: "The within-named A. B., having been brought before me under this warrant, is committed for examination to the sheriff of ———." If the sheriff be not present, the defendant may be committed to the custody of a peace officer.

SEC. 131. At the examination the magistrate shall in the first place read to the defendant the depositions of the witnesses examined on the taking of the information. He shall also issue subpœnas for any witnesses required by the prosecutor or the defendant.

SEC. 132. The witnesses shall be examined in the presence of the defendant, and may be cross-examined in his behalf.

SEC. 133. When the examination of witnesses on the part of the Territory is closed, the magistrate shall distinctly inform the defendant that it is his right to make a statement in relation to the charge against him (stating to him the nature thereof), that the statement is designed to enable him, if he see fit, to answer the charge, and to explain the fact alleged against him, that he is at liberty to waive making a statement, and that his waiver cannot be used against him on the trial.

SEC. 134. If the defendant waive his right to make a statement, the magistrate shall make a note thereof, immediately following the depositions of the witnesses against the defendant, but the fact of his waiver shall not be used against the defendant on the trial.

SEC. 135. If the defendant choose to make a statement, the magistrate shall proceed to take the same in writing without oath, and shall put to the defendant the following questions only: "What is your name and age? Where were you born? Where do you reside, and how long have you resided there? What is your business or profession? Give any explanation you may think proper of the circumstances appearing in the testimony against you, and state any facts which you think will tend to your exculpation."

SEC. 136. The answer of the defendant to each of the questions must be distinctly read to him as it is taken down. He may thereupon correct or add to his answer, and it shall be corrected until it is made conformable to what he declares to be the truth.

SEC. 137. The statement must be reduced to writing by the magistrate, or under his direction, and authenticated in the following form: 1st. It must set forth in detail that the defendant was informed of his rights, as provided by section one hundred and thirty-three, and that, after being so informed, he made the statement; 2d. It must contain the questions put to him and his answers thereto, as provided in section one hundred and thirty-five and one hundred and thirty-six; 3d. It may be signed by the defendant, or he may refuse to sign it; but if he refuse to sign it, his reason therefor must be stated as he gives it; 4th. It must be signed and certified by the magistrate.

SEC. 138. After the waiver of the defendant to make a statement, or after he has made it, his witnesses, if he produce any, shall be sworn and examined.

SEC. 139. The witnesses produced on the part either of the Territory or of the defendant shall not be present at the examination of the defendant, and while a witness is under examination, the magistrate may exclude all witnesses who have not been examined. He may also cause the witnesses to be kept separate, and to be prevented from conversing with each other until they are all examined.

SEC. 140. The magistrate shall also, upon the request of the defendant, exclude from the examination every person except his clerk, the prosecutor and his counsel, and the attorney-general, the defendant and his counsel, and the officer having the defendant in custody.

SEC. 141. The testimony given by each witness must be reduced to writing, as a deposition by the magistrate or under his direction, and, 1st. It must contain the name of the witness, his place of residence, and his business or profession; 2d. If a question put be objected to on either side and overruled, or the witness decline answering it, that fact, with the ground on which the question was overruled, must be stated; 3d. It must be signed by the witness, or if he refuse to sign it, his reason for refusing must be stated as he gives it; and, 4th. It must be signed and certified by the magistrate.

SEC. 142. After hearing the proofs and the statement of the defendant, if he have made one, if it appear either that a public offence has not been committed, or there is no sufficient cause to believe the defendant guilty thereof, the magistrate shall order the defendant to be discharged by an endorsement on the depositions and statement signed by him to the following effect: "There being no sufficient cause to believe the within-named A. B. guilty of the offence within mentioned, I order him to be discharged."

SEC. 143. If, however, it appear from the examination that a public offence has been committed, and there is sufficient cause to believe the defendant guilty thereof, the magistrate shall in like manner endorse on the depositions and statement an order signed by him to the following effect: "It appearing to me by the within depositions (and the statement, if any)

that the offence therein mentioned (or any other offence according to the fact, stating generally the nature thereof), has been committed, and that there is sufficient cause to believe the within-named A. B. guilty thereof, I order that he be held to answer to the same."

SEC. 144. If the offence be not bailable, the following words, or words to the same effect shall be added to the endorsement, "and that he be committed to the sheriff of the county of ———."

SEC. 145. If the offence be bailable, and the bail be taken by the magistrate, the following words, or words to the same effect, shall be added to the endorsement, "and I have admitted him to bail to answer by the recognizance hereto annexed."

SEC. 146. If the offence be bailable, and the defendant be admitted to bail, but bail have not been taken, the following words, or words to the same effect, shall be added to the endorsement mentioned in section one hundred and forty-three, "and that he be admitted to bail, in the sum of —— dollars, and be committed to the sheriff of the county of ——, until he gives such bail."

SEC. 147. If the magistrate order the defendant to be committed, he shall make out a commitment signed by him with his name of office, and deliver it, with the defendant, to the officer to whom he is committed, or, if that officer be not present, to a peace officer, who shall deliver the defendant into the proper custody, together with the commitment.

SEC. 148. The commitment must be to the following effect: "County of ——— (as the case may be). The Territory of Arizona to the sheriff of the county of ———: An order having been this day made by me that A. B. be held to answer upon a charge of (stating briefly the nature of the offence, and as near as may be the time when and the place where the same was committed), you are commanded to receive him into your custody, and detain him until he be legally discharged. Dated this —— day of ——, 18—."

SEC. 149. On holding the defendant to answer, the magistrate shall take from each of the material witnesses examined before him on the part of the Territory a written recognizance, to the effect that he will appear and testify at the court to which the depositions and statements are to be sent, or that he will forfeit the sum of five hundred dollars.

SEC. 150. Whenever the magistrate shall be satisfied by proof on oath that there is reason to believe that any such witness will not fulfil his recognizance to appear and testify, unless security be required, he may order the witness to enter into a written recognizance, with such sureties and in such sum as he may deem meet for his appearance, as specified in the last section.

SEC. 151. Infants and married women, who are material witnesses against the defendant, may in like manner be required to procure sureties for their appearance, as provided in the last section.

SEC. 152. If a witness required to enter recognizance to appear and testify either with or without sureties, refuse compliance with the order for that purpose, the magistrate shall commit him to prison until he comply or be legally discharged.

SEC. 153. When, however, it shall satisfactorily appear by the examination on oath of the witness, or any other person, that the witness is unable to procure sureties, he may be forthwith conditionally examined on behalf of the Territory; such examination shall be by question and answer, and shall be conducted in the same manner as the examination before a committing magistrate is required by this act to be conducted, and the witness shall thereupon be discharged.

SEC. 154. The last section shall not apply to the prosecutor or to an accomplice in the commission of the offence charged.

SEC. 155. When a magistrate has discharged a defendant, or has held him to answer as hereinbefore provided, he shall return without delay to the clerk of the district court, the warrant, if any, the depositions, the statement of the defendant, if he have made one, and all recognizance of bail or for the appearance of witnesses taken by him.

Of Proceedings after Commitment and before Indictment.—Preliminary Proceedings.

SEC. 156. All public offences prosecuted in the district court, must be prosecuted by indictment, except as provided in the next section.

SEC. 157. When the proceedings are had for the removal of county or precinct officers, they may be commenced by an accusation in writing, as provided in this chapter.

SEC. 158. All accusations against county and precinct officers, and all indictments, must be found in the district court of the proper county.

Formation of the Grand Jury.

SEC. 159. The formation of grand juries is prescribed by special statutes.

SEC. 160. A person held to answer to a charge for a public offence, may challenge the panel of the grand jury, or any individual grand juror.

SEC. 161. A challenge to the panel may be interposed for one or more of the following causes only: 1st. That the requisite number of ballots was not drawn from the jury box of the county, as prescribed by law; 2d. The notice of the drawing of the grand jury was not given as prescribed by law; 3d. That the drawing was not had in the presence of the officers or officer designated by law; 4th. That such grand jury was not otherwise obtained according to law.

SEC. 162. A challenge to an individual grand juror may be interposed for one or more of the following causes only: 1st. That he is a minor; 2d. That he is an alien; 3d. That he is insane; 4th. That he is prosecutor upon a charge against the defendant; 5th. That he is a witness on the part of the prosecution, and has been served with process or bond by an undertaking as such; 6th. That he has formed or expressed a decided opinion that the defendant is guilty of the offence for which he is held to answer.

SEC. 163. The challenges mentioned in the last three sections may be oral, and shall be entered upon the minutes, and tried by the court in the same manner as challenges in the case of a trial jury, which are triable by the court.

SEC. 164. The court shall allow or disallow the challenge, and the clerk shall enter its decisions in the minutes.

SEC. 165. If a challenge to the panel be allowed, the grand jury are prohibited from inquiring into the charge against the defendant by whom the challenge was interposed. If they should, notwithstanding, do so and find an indictment against him, the court shall direct the indictment to be set aside.

SEC. 166. If a challenge to an individual grand juror be allowed, he shall not be present or take part in the consideration of the charge against the defendant who interposed the challenge or the deliberations of the grand jury thereon.

SEC. 167. The grand jury shall inform the court of a violation of the last section, and it shall be punished by the court as a contempt.

SEC. 168. A person held to answer to a charge for a public offence, can take advantage of any objection to the panel or to an individual grand juror, in no other mode than that by challenge, as prescribed in the preceding sections.

SEC. 169. From the persons summoned to serve as grand jurors and appearing, the court shall appoint a foreman. The court shall also appoint a foreman, when the person already appointed is excused or discharged before the grand jury is dismissed.

SEC. 170. The following oath shall be administered to the foreman of the grand jury: "You, as foreman of the grand jury, shall diligently inquire into and true presentment make, of all public offences against the United States and of this Territory, committed or triable within this county, of which you have or can obtain legal evidence. You shall present no person through malice, hatred, or ill-will, nor leave any unpresented through fear, favor, or affection, or for any rewards or the promise or hope thereof; but in all your presentments you shall present the truth, the whole truth, and nothing but the truth, according to the best of your skill and understanding, so help you God."

SEC. 171. The following oath shall be immediately thereupon administered to the other grand jurors present: "The same oath which your foreman has now taken before you on his part, you and each of you shall well and truly observe on your part, so help you God."

SEC. 172. The grand jury being empannelled and sworn, shall be charged by the court. In doing so, the court shall give them such information as it may deem proper as to the nature of their duties, and any charges for public offences returned to the court or likely to come before the grand jury. The court need not, however, charge them respecting violations of any particular statute.

SEC. 173. The grand jury shall then withdraw to a private room, and inquire into the offences cognizable by them.

SEC. 174. The grand jury, on the completion of the business before them, shall be discharged by the court, but whether the business be completed or not, they shall be discharged by the final adjournment of the court.

SEC. 175. If an offence be committed during the sitting of the court, after the discharge of the grand jury, the court may, in its discretion, direct an order to be entered that the sheriff summon another grand jury.

SEC. 176. An order shall thereupon be made out by the clerk and directed to the sheriff, requiring him to summon twenty-four persons qualified to serve as grand jurors to appear forthwith, or at such time as may be appointed by the court.

SEC. 177. The sheriff shall execute the order, and return it with a list of the names of the persons summoned.

SEC. 178. At the time appointed the list shall be called over, and the names of those in attendance be written by the clerk on separate ballots and put into a box, from which a grand jury shall be drawn.

SEC. 179. The clerk shall issue the order, and the sheriff shall execute and return it at the time specified, with a list of the names of the persons so summoned. If he has been unable to summon the whole number in the time allowed, he shall return the order with the list of names summoned.

SEC. 180. The court may, in its discretion, enlarge the time of the return, and direct the sheriff to summon the whole number, or may proceed to empannel a grand jury from the number summoned.

SEC. 181. Upon the return of the order, or upon the expiration of the further time allowed, the names of the persons summoned shall be called, and the court shall proceed to empannel a grand jury and a trial jury in like manner as if such persons had been empannelled upon a regular drawing of a jury.

Powers and Duties of a Grand Jury.

SEC. 182. The grand jury has the power, and it is their duty, to inquire into all public offences committed or triable within the county, and to present them to the court either by presentment or by indictment.

SEC. 183. An indictment is an accusation in writing, presented by the grand jury to a competent court, charging a person with a public offence.

SEC. 184. A presentment is an informal statement in writing by the grand jury, representing to the court that a public offence has been committed, which is triable within the county, and that there is reasonable ground for believing that particular individual named or described, has committed it.

SEC. 185. The foreman may administer an oath to any witness appearing before the grand jury.

SEC. 186. In the investigation of a charge, for the purpose of either pre-

sentment or indictment, the grand jury shall receive no other evidence than such as is given by witnesses produced and sworn before them, or furnished by legal documentary evidence, or the deposition of witnesses taken as provided in this chapter.

SEC. 187. The grand jury shall receive none but legal evidence, and the best evidence in degree, to the exclusion of hearsay or secondary evidence.

SEC. 188. The grand jury ought to find an indictment, when all the evidence before them, taken together, is such as in their judgment would, if unexplained or uncontradicted, warrant a conviction by the trial jury.

SEC. 189. If a member of the grand jury know, or have reason to believe that a public offence has been committed, which is triable within the county, he must declare the same to his fellow-jurors, who shall thereupon investigate the same.

SEC. 190. The grand jury must inquire into the case of every person imprisoned in the jail of the county on a criminal charge and not indicted; into the condition and management of the public prisons within the county; and into the wilful and corrupt misconduct in office of public officers of every description within the county.

SEC. 191. They are also entitled to free access, at all reasonable times, to the public prisons, and to the examination, without charge, of all public records within the county.

SEC. 192. The grand jury may at all reasonable times ask the advice of the court, or any member thereof, and of the attorney-general. Unless his advice be asked, no member of the court shall be permitted to be present during the sessions of the grand jury. The attorney-general, or other attorney appointed for that purpose, shall be allowed at all times to appear before the grand jury, on his request, for the purpose of giving information or advice relative to any matter cognizable by them; and may interrogate witnesses before them, when they shall deem it necessary. Except such attorney, no person shall be permitted to be present before the grand jury besides the witnesses actually under examination, and no person shall be permitted to be present during the expression of their opinions, or the giving of their votes upon any matter before them.

SEC. 193. Every member of the grand jury shall keep secret whatever he himself or any other grand juror may have said, or in what manner he or any other grand juror may have voted on a matter before them.

SEC. 194. A member of the grand jury may, however, be required by any court to disclose the testimony of a witness examined before the grand jury, for the purpose of ascertaining whether it is consistent with that given by the witness before the court, or to disclose the testimony given before them by any person, upon a charge against him for perjury in giving his testimony, or upon his trial therefor.

SEC. 195. No grand juror shall be questioned for anything he may say, or any vote he may give in the grand jury relative to a matter legally pending before the jury, except for a perjury of which he may have been guilty in making an accusation or in giving testimony to his fellow-jurors.

Presentment, and Proceedings thereon.

SEC. 196. A presentment cannot be found without the concurrence of at least twelve grand jurors. When so found, it must be signed by the foreman.

SEC. 197. The presentment, when found, must be presented by the foreman, in presence of the grand jury, to the court, and shall be filed by the clerk.

SEC. 198. No grand juror, attorney, clerk, judge, or other officer, shall disclose the fact of a presentment having been made for a felony until the defendant shall have been arrested. But this prohibition shall not extend to disclosure by the issuing or in the execution of a warrant to arrest the defendant.

SEC. 199. A violation of the provisions of the last section shall be punished as a contempt and as a misdemeanor.

SEC. 200. If the court deem that the fact stated in the presentment constitute a public offence, triable within the county, it shall direct the clerk to issue a bench warrant for the arrest of the defendant.

SEC. 201. The clerk, on the application of the attorney-general, may accordingly, at any time after the order, whether the court be sitting or not, issue a bench warrant under his signature and the seal of the court into one or more counties.

SEC. 202. The bench warrant upon presentment shall be substantially in the following form:

TERRITORY OF ARIZONA, COUNTY OF .

To any sheriff, constable, marshal, or policeman in this Territory:

A presentment having been made on the day of , 18 , to the district court of the county of , charging C. D. with the crime of (designating it generally), you are therefore commanded forthwith to arrest the above-named C. D. and take him before E. F., a magistrate of this county, or, in case of his absence or inability to act, before the nearest or most accessible magistrate in this county.

Given under my hand, with the seal of said court affixed, this day of , A. D. 18 .

By order of the court,

G. H., *clerk.*

SEC. 203. The bench warrant may be served in any county, and the officer serving it shall proceed thereon in all respects as upon a warrant of arrest on a complaint.

SEC. 204. The magistrate, when the defendant is brought before him, shall proceed to examine the charges contained in the presentment, and hold the defendant to answer the same or discharge him therefrom, in the same manner in all respects as upon a warrant of arrest on complaint.

OF THE INDICTMENT.

Finding and Presentation of Indictment.

SEC. 205. An indictment cannot be found without the concurrence of at least twelve grand jurors; when so found, it shall be endorsed "A true bill," and the endorsement shall be signed by the foreman of the grand jury.

SEC. 206. If twelve grand jurors do not concur in finding an indictment against the defendant who has been held to answer, the deposition and statement, if any, transmitted to them, shall be returned to the court with an endorsement thereon signed by the foreman, to the effect that the charge is dismissed.

SEC. 207. The dismissal of the charge shall not, however, prevent the charge from being again submitted to a grand jury, or as often as the court shall so direct. But without such direction it shall not be again submitted.

SEC. 208. When an indictment is found, the names of the witnesses examined before the grand jury shall be inserted at the foot of the indictment, or endorsed thereon before it is presented to the court.

SEC. 209. An indictment, when found by the grand jury, shall be presented by their foreman in their presence to the court, and shall be filed by the clerk and remain in his office as a public record.

SEC. 210. When an indictment has been found against a defendant not in custody, the same proceedings shall be had as are prescribed in sections two hundred and thirty seven and two hundred and forty-four, both inclusive, against a defendant who fails to appear for arraignment.

Form of Indictment.

SEC. 211. All the forms of pleading in criminal actions, and the rules by which the sufficiency of pleadings is to be determined, shall be those which are prescribed by this chapter.

SEC. 212. The first pleading on the part of the Territory is the indictment.

SEC. 213. The indictment shall contain the title of the action, specifying the name of the court to which the indictment is presented, and the names of the parties, a statement of the acts constituting the offence in ordinary and concise language, and in such manner as to enable a person of common understanding to know what is intended.

SEC. 214. It may be substantially in the following form:

TERRITORY OF ARIZONA:

Against A. B., in the district court in the county of , term A. D. 18 :

A. B. is accused by the grand jury of the county of , by this indictment, of the crime of (giving its legal appellation, such as murder,

arson, manslaughter, or the like, or designating it as felony or misdemeanor) committed as follows: The said A. B., on the day of , A. D. 18 , at the county of (stating the act or omission constituting the offence, in the manner prescribed in this chapter, according to the forms mentioned in the next section where they are applicable.)

SEC. 215. The indictment must be direct and certain as it regards: 1st. The party charged; 2d. The offence charged; 3d. The particular circumstances of the offence charged, when they are necessary to constitute a complete offence.

SEC. 216. When a defendant is indicted by a fictitious or erroneous name, and in any stage of the proceedings his true name is discovered, it shall be inserted in the subsequent proceedings, referring to the fact of his being indicted by the name mentioned in the indictment.

SEC. 217. The indictment shall charge but one offence, but it may set forth that offence in different forms under different counts.

SEC. 218. The precise time at which it was committed need not be stated in the indictment, but it may be alleged to have been committed at any time before the finding of the same, except when the time is a material ingredient of the offence.

SEC. 219. When an offence involves the commission, or an attempt to commit private injury, and is described with sufficient certainty in other respects to identify the act, an erroneous allegation as to the person injured, or intended to be injured, shall not be deemed material.

SEC. 220. The words used in an indictment shall be construed in the usual acceptance in common language, except such words and phrases as are defined by law, which are to be construed according to their legal meaning.

SEC. 221. Words used in a statute to define a public offence, need not be strictly pursued in the indictment, but other words conveying the same meaning may be used.

SEC. 222. The indictment shall be sufficient if it can be understood therefrom: 1st. That it is entitled in a court having authority to receive it, though the name of the court be not actually set forth; 2d. That it was found by a grand jury of the county in which the court was held; 3d. That the defendant is named, or if his name cannot be discovered, that he be described by a fictitious name, with a statement that he has refused to discover his real name; 4th. That the offence was committed at some place within the jurisdiction of the court, except where, as provided by sections sixty-six to seventy-four, both inclusive, and as in the case of treason, the act, though done without the local jurisdiction of the county, is triable therein; 5th. That the offence was committed at some time prior to the time of finding the indictment; 6th. That the act or omission charged as the offence is clearly and distinctly set forth in ordinary and concise language, without repetition, and in such a manner as to enable a person of common understanding to know what is intended; 7th. That the act or omission charged as the offence is stated with such a degree of certainty as to enable

the court to pronounce judgment upon a conviction according to the right of the case.

SEC. 223. No indictment shall be deemed insufficient, nor shall the trial, judgment, or other proceeding thereon be affected by reason of any defect or imperfection in matters of form, which shall not tend to the prejudice of the defendant.

SEC. 224. Neither presumptions of law, nor matters of which judicial notice is taken, need be stated in an indictment.

SEC. 225. In pleading a judgment or other determination of, or proceeding before a court or officer of special jurisdiction, the facts conferring jurisdiction need not be stated, but it may be stated that the judgment or determination was duly made or the proceedings duly had before such court or officer. The facts constituting the jurisdiction, however, must be established on the trial.

SEC. 226. In pleading a private statute or a right derived therefrom, it shall be sufficient to refer to the statute by its title and the day of its passage, and the court thereupon shall take judicial notice thereof.

SEC. 227. An indictment for libel need not set forth any extrinsic facts for the purpose of showing the application to the party libelled of the defamatory matter on which the indictment is founded, but it shall be sufficient to state generally that the same was published concerning him, and the fact that it was so published must be established on the trial.

SEC. 228. When an instrument which is the subject of an indictment for forgery has been destroyed or withheld by the act or the procurement of the defendant, and the fact of such destruction or withholding is alleged in the indictment and established on the trial, the misdescription of the instrument shall be deemed immaterial.

SEC. 229. In an indictment for perjury or subornation of perjury, it shall be sufficient to set forth the substance of the controversy, or matter in respect to which the offence was committed, and in what court and before whom the oath alleged to be false was taken, and that the court or the person before whom it was taken had authority to administer the same, with proper allegations to the falsity of the matter on which the perjury is assigned; but the indictment need not set forth pleadings, record, or proceedings with which the oath is connected, nor the commission, or the authority of the court, or the person before whom the perjury was committed.

SEC. 230. Upon an indictment against several defendants, any one or more may be convicted or acquitted.

SEC. 231. No distinction shall exist between an accessary before the fact and a principal, or between principals in the first and second degree, in cases of felony; and all persons concerned in the commission of a felony, whether they directly commit the act constituting the offence, or aid and abet in its commission, though not present, shall hereafter be indicted, tried, and punished as principals.

SEC. 232. An accessary after the fact to a commission of a felony, may be indicted and punished, though the principal felon may be neither tried nor indicted.

SEC. 233. A person may be indicted for having, with the knowledge of the commission of a public offence, taken money or property of another, or a gratuity or a reward, or an agreement or understanding, express or implied, to compound or conceal the offence, or to abstain from a prosecution therefor, or to withhold any evidence thereof, though the persons guilty of the original offence have not been indicted or tried.

Arraignment of the Defendant.

SEC. 234. When the indictment is filed the defendant shall be arraigned thereon before the court in which it is found, except in the cases in this chapter otherwise provided.

SEC. 235. If the indictment be for a felony, the defendant must be personally present, but if for a misdemeanor, his personal appearance is unnecessary, and he may appear upon the arraignment by counsel.

SEC. 236. When his personal appearance is necessary, if he be in custody, the court may direct the officer in whose custody he is to bring him before it to be arraigned, and the officer shall do so accordingly.

SEC. 237. If the defendant has been discharged on bail, or has deposited money instead thereof, and do not appear to be arraigned when his personal attendance is necessary, the court, in addition to the forfeiture of the recognizance or of the money deposited, may direct the clerk to issue a bench warrant for his arrest.

SEC. 238. The clerk, on the application of the attorney prosecuting, or attorney-general, may accordingly, at any time after the order, whether the court be sitting or not, issue a bench warrant into one or more counties.

SEC. 239. The bench warrant upon the indictment shall, if the offence be a felony, be substantially in the following form:

TERRITORY OF ARIZONA, COUNTY OF .

To any sheriff, constable, marshal, or policeman in this Territory:

An indictment having been found on the day of , A. D., 18 , in the district court, in the county of , charging C. D. with the crime of (designating it generally), you are therefore commanded forthwith to arrest the above-named C. D. and bring him before that court to answer the indictment; or if the court have adjourned for the term, that you deliver him into the custody of the sheriff of the county of .

Given under my hand with the seal of the court affixed, this the day of , A. D. 18 .

[*Seal.*] *By order of the court*, E. F., *clerk.*

SEC. 240. The defendant, if the offence be punishable with death, when

arrested under the warrant, shall be held in custody by the sheriff of the county in which the indictment is found, unless admitted to bail, upon an examination upon a writ of *habeas corpus*.

SEC. 241. If the offence be not capital, the bench warrant shall be in a similar form, adding to the body thereof a direction to the following effect: "Or if he require it, that you take him before any magistrate in that county, or in the county in which you arrest him, that he may give bail to answer the indictment."

SEC. 242. If the offence charged be not capital, the court, upon the bench warrant to issue, shall fix the amount of bail, and an endorsement shall be made upon the bench warrant signed by the clerk, to the following effect: "The defendant is to be admitted to bail in the sum of dollars."

SEC. 243. The bench warrant may be served in any county, in the same manner as a warrant of arrest.

SEC. 244. If the defendant be brought before a magistrate of another county for the purpose of giving bail, the magistrate shall proceed in all respects thereto in the same manner as if the defendant had been brought before him upon a warrant of arrest, and the same proceedings may be had thereon as provided in sections ninety-three to ninety-six, both inclusive.

SEC. 245. When the indictment is for a felony, and the defendant, before the finding thereof, has given bail for his appearance to answer the charge, the court to which the indictment is presented may order the defendant to be committed to actual custody, unless he give bail in an increased amount, to be specified in the order.

SEC. 246. If such order be made, and the defendant be present, he shall be forthwith committed accordingly. If he be not present, a bench warrant shall be issued and proceeded upon in the manner provided for in this chapter.

SEC. 247. If the defendant appear for arraignment without counsel, he shall be informed by the court that it is his right to have counsel before being arraigned, and shall be asked if he desire the aid of counsel.

SEC. 248. The arraignment must be made by the court, or by the clerk or the attorney-general under its direction, and consists in reading the indictment to the defendant and delivering to him a copy thereof, and of the endorsements thereon, including the list of witnesses endorsed on it, and asking him whether he pleads guilty or not guilty to the indictment.

SEC. 249. When the defendant is arraigned, he shall be informed that if the name by which he is indicted be not his true name, he must then declare his true name, or be proceeded against by the name in the indictment.

SEC. 250. If he give no other name, the court may proceed accordingly.

SEC. 251. If he allege that another name is his true name, the court shall direct an entry thereof in the minutes of the arraignment, and the subsequent proceedings on the indictment may be had against him by that name, referring also to the name by which he is indicted.

SEC. 252. If on the arraignment the defendant require it, he shall be allowed until the next day, or such further time may be allowed him as the court may deem reasonable, to answer the indictment.

SEC. 253. If the defendant do not require time, as provided in the last section, or if he do, then on the next day, or at such future day as the court may have allowed him, he may answer to the arraignment, either move the court to set aside the indictment, or may demur or plead thereto.

Setting aside the Indictment.

SEC. 254. The indictment shall be set aside by the court in which the defendant is arraigned, and upon his motion, in either of the following cases: 1st. Where it is not found, endorsed, and presented as prescribed in this chapter; 2d. Where any person is permitted to be present during the session of the grand jury while the charge embraced in the indictment is under consideration, except as otherwise provided.

SEC. 255. When the defendant had not been held to answer before the finding of the indictment, he may move to set it aside, on any ground not above enumerated, and which may be allowed by the court.

SEC. 256. If the motion to set aside the indictment be not made, the defendant shall be precluded from afterwards taking the objections mentioned in the last two sections.

SEC. 257. The motion shall be heard when it is made, unless for good cause the court shall postpone the hearing to another time.

SEC. 258. If the motion be denied, the defendant must immediately answer the indictment, either by demurring or pleading thereto.

SEC. 259. If the motion be granted, the court shall order that the defendant in custody be discharged therefrom; or if admitted to bail, that his bail be exonerated; or if he have deposited money instead of bail, that the same shall be refunded to him, unless it direct that the case be submitted to the same or another grand jury.

SEC. 260. If the court direct that the case be re-submitted, the defendant, if already in custody, shall so remain, unless he be admitted to bail, or if already admitted to bail, or money have been deposited instead thereof, the bail or money shall be answerable for the appearance of the defendant to answer a new indictment.

SEC. 261. Unless a new indictment be found before the next grand jury of the county is discharged, the court shall, on the discharge of such grand jury, make the order prescribed in section two hundred and fifty-nine.

SEC. 262. An order to set aside an indictment, as provided in this chapter, shall be no bar to a future prosecution for the same offence.

Demurrer.

SEC. 263. The only pleading on the part of the defendant is either a demurrer or a plea.

SEC. 264. Both the demurrer and the plea must be put in open court, either at the time of the arraignment, or at such other time as may be allowed to the defendant for that purpose.

SEC. 265. The defendant may demur to the indictment when it shall appear upon the face thereof, either: First. That the grand jury by which it was found had no legal authority to inquire into the offence charged, by reason of its not being within the legal jurisdiction of the county. Second. That it does not substantially conform to the requirement of sections two hundred and thirteen and two hundred and fourteen. Third. That more than one offence has been charged in the indictment. Fourth. That the facts stated do not constitute a public offence. Fifth. That the indictment contains any matter which, if true, would constitute a legal justification or excuse of the offence charged, or other legal bar to the prosecution.

SEC. 266. The demurrer must be in writing, signed either by the defendant or his counsel, and filed. It must distinctly specify the grounds of objection to the indictment, or it shall be disregarded.

SEC. 267. Upon the demurrer being filed, the argument of the objections presented thereby shall be had either immediately, or at such time as the court may appoint.

SEC. 268. Upon considering the demurrer, the court shall give judgment, either allowing or disallowing it, and an order to that effect shall be entered on the minutes.

SEC. 269. If the demurrer be allowed, the judgment shall be final upon the indictment demurred to, and shall be a bar to another prosecution of the same offence, unless the court, being of opinion that the objection on which the demurrer is allowed may be avoided in a new indictment, direct the case to be so submitted to the same or another grand jury.

SEC. 270. If the court do not direct the case to be re-submitted, the defendant, if in custody, shall be discharged, or, if admitted to bail, his bail shall be exonerated; or if he has deposited money instead of bail, the money shall be refunded to him.

SEC. 271. If the court direct that the case be re-submitted anew, the same proceedings must be had thereon as are prescribed in sections two hundred and sixty and two hundred and sixty-one.

SEC. 272. If the demurrer be disallowed, the court shall permit the defendant, at his election, to plead, which he must do forthwith, or at such time as the court may allow; if he do not plead, judgment shall be pronounced against him.

SEC. 273. When the objections mentioned in section two hundred and sixty-five appear upon the face of the indictment, they can only be taken advantage of by demurrer, except that the objection to the jurisdiction of the court over the subject of the indictment, or that the facts stated do not constitute a public offence, may be taken at the trial under the plea of not guilty and in arrest of judgment.

Pleas.

SEC. 274. There are three kinds of pleas to an indictment. A plea of: First, guilty; second, not guilty; third, a former judgment of conviction or acquittal of the offence charged, which may be pleaded either with or without the plea of "not guilty."

SEC. 275. Every plea shall be oral, and shall be entered upon the minutes of the court.

SEC. 276. The plea shall be entered in substantially the following form: First, if the defendant plead guilty, "the defendant pleads that he is guilty of the offence charged in this indictment." Second, if he plead not guilty, "the defendant pleads that he is not guilty of the offence charged in this indictment." Third, if he plead a former acquittal or conviction, "the defendant pleads that he has already been convicted (or acquitted, as the case may be) of the offences charged in this indictment by the judgment of the court of (naming it), rendered at (naming the place), on the ——— day of ———."

SEC. 277. A plea of guilty can in no place be put in, except by the defendant himself in open court, unless upon an indictment against a corporation, in which case it may be put by counsel.

SEC. 278. The court may, at any time before judgment, upon a plea of guilty, permit it to be withdrawn, and a plea of not guilty substituted.

SEC. 279. The plea of not guilty shall be deemed a denial of every material allegation in the indictment.

SEC. 280. All matters of fact tending to establish a defence may be given in evidence, under the plea of not guilty, except a former judgment of acquittal or conviction of the offence charged.

SEC. 281. If the defendant were formerly acquitted on the ground of a variance between the indictment and the proof, or upon an objection to the form or substance of the indictment, it shall not be deemed an acquittal of the same offence.

SEC. 282. When, however, he shall have been acquitted on the merits, he shall be deemed acquitted of the same offence, notwithstanding any defect in form or substance in the indictment on which he was acquitted.

SEC. 283. When the defendant shall have been convicted or acquitted upon an indictment, the conviction or acquittal shall be a bar to another indictment for the offence charged in the former, or for an attempt to commit the same, or for an offence necessarily included therein, of which he might have been convicted under that indictment, as hereinafter provided.

SEC. 284. If the defendant refuse to answer the indictment by demurrer or plea, a plea of not guilty shall be entered.

Removal of the Action to another County.

SEC. 285. A criminal action, prosecuted by indictment, may be removed

from the court in which it is pending, on the application of the defendant, on the ground that a fair and impartial trial cannot be had in the county where the indictment is pending.

SEC. 286. The application must be made in open court, and in writing, verified by the affidavit of the defendant, and a copy must be served on the attorney prosecuting the same, at least one day before the application is made to the court.

SEC. 287. If the court be satisfied that the representation of the defendant is true, an order shall be made for the removal of the action to the district court of a county which is free from the like objection.

SEC. 288. The order of removal shall be entered on the minutes, and the clerk shall immediately make out and transmit a certified copy of the entry, with a certified copy of the record, pleadings, and proceedings in the action, including the recognizances for the appearance of the defendant and of the witnesses, to the court to which the action is removed.

SEC. 289. If the defendant be in custody, the order shall direct his removal by the sheriff of the county where he is imprisoned to the custody of the sheriff of the county to which the action is removed, and he shall be forthwith removed accordingly.

SEC. 290. The court to which the action is removed shall proceed to trial and judgment therein, as if the action had been commenced in said court. If it be necessary to have any of the original pleadings or other papers before such court, the court from which the action is removed shall, at any time on application of the attorney-general or the defendant, order such papers or pleadings to be transmitted by the clerk, a certified copy thereof being retained.

Of the Proceedings on the Indictment before Trial.

The Mode of Trial.

SEC. 291. An issue of fact arises: 1st. Upon a plea of not guilty; or, 2d. Upon a plea of a former conviction or acquittal of the same offence.

SEC. 292. An issue of fact must be tried by a jury of the county in which the indictment was found, unless the action be removed by order of the court into some other county.

SEC. 293. If the indictment be for a misdemeanor, the trial may be had in the absence of the defendant; but if for a felony, he must be personally present.

Formation of the Trial Jury and the Criminal Docket.

SEC. 294. Trial juries for criminal actions shall be formed in the same manner as trial juries for civil actions.

SEC. 295. The clerk shall keep a docket of all the criminal actions pend-

ing in the court, in which he shall enter each indictment according to the date of filing, specifying opposite the title of each action whether it be for a felony or a misdemeanor, and whether the defendant be in custody or on bail.

SEC. 296. The issues on the docket shall be disposed of in the following order, unless upon the application of either party, for good cause shown by affidavit, and upon two days notice to the opposite party, with a copy of the affidavit in support of the application, the court shall direct an indictment to be tried out of its order: 1st. Indictment for felony when the defendant is in custody; 2d. Indictments for misdemeanor when the defendant is in custody; 3d. Indictments for felony when the defendant is on bail; and, 4th. Indictments for misdemeanor when the defendant is on bail.

SEC. 297. After his plea, the defendant shall have at least one day to prepare for his trial, if he require it.

Postponement of Trial.

SEC. 298. When an indictment is called for trial the court may, upon sufficient cause shown by affidavit, direct the trial to be postponed to another day of the same term, or the next term.

Challenging the Jury.

SEC. 299. A challenge is an objection made to the trial jurors, and is of two kinds: 1st. To the panel; 2d. To an individual juror.

SEC. 300. When several defendants are tried together, they are not allowed to sever their challenges, but must join therein.

SEC. 301. The panel is a list of jurors returned by a sheriff to serve at a particular court, or for the trial of a particular cause.

SEC. 302. A challenge to the panel is an objection made to all the jurors returned, and may be taken by either party.

SEC. 303. A challenge to the panel can only be founded on a material departure from the forms prescribed by the statute in respect to the drawing and return of the jury, or an intentional omission of the sheriff to summon one or more of the jurors drawn.

SEC. 304. A challenge to a panel must be taken before a juror is sworn, and must be in writing, specifying plainly and distinctly the facts constituting the grounds of challenge.

SEC. 305. If the sufficiency of the facts alleged as a ground of challenge be determined, the adverse party may except to the challenge. The exception need not be in writing, but shall be entered on the minutes of the court.

SEC. 306. Upon the exception, the court shall proceed to try the sufficiency of the challenge, assuming the facts alleged therein to be true.

SEC. 307. If on the exception the court deem the challenge sufficient, it may, if justice require it, permit the party excepting to withdraw his exception, and to deny the facts alleged in the challenge. If the exception be allowed, the court may in like manner permit an amendment of the challenge.

SEC. 308. If the challenge be denied, the denial may in like manner be oral, and shall be entered on the minutes of the court, and the court shall proceed to try the question of fact.

SEC. 309. Upon such trial, the officers, whether judicial or ministerial, whose irregularity is complained of, as well as any other persons, may be examined to prove or disprove the facts alleged as the grounds of challenge.

SEC. 310. When the panel is formed from persons whose names are not drawn from the grand jury box, a challenge may be made to the panel on account of any bias of the officer who summoned the jury, which would be good ground of challenge to a juror. Such objection shall be made in the same form, and determined in the same manner as when made to a juror.

SEC. 311. If, either upon an exception to the challenge or a denial of the fact, the challenge be allowed, the court shall discharge the jury, so far as the trial of the indictment in question is concerned. If it be disallowed, the court shall direct the jury to be empannelled.

SEC. 312. Before a juror is called, the defendant must be informed by the court, or under its direction, that if he intend to challenge any individual juror, he must do so when the juror appears and before he is sworn.

SEC. 313. A challenge to an individual juror is, either: 1st. Peremptory; or, 2d. For cause.

SEC. 314. It must be taken when the juror appears, and before he is sworn, but the court may, for good cause, permit it to be taken after the juror is sworn, and before the jury is completed.

SEC. 315. A peremptory challenge may be taken by either party, and may be oral. It is an objection to a juror for which no reason need be given, but upon which the court shall exclude him.

SEC. 316. If the offence charged be punishable with death, or with imprisonment in a State prison for life, the defendant is entitled to ten, and the Territory to five peremptory challenges. On a trial for any other offence, the defendant is entitled to five, and the Territory to three peremptory challenges.

SEC. 317. A challenge for cause may be taken by either party. It is an objection to a particular juror, and is either: 1st. General, that the juror is disqualified from serving in any case; or, 2d. Particular, that he is disqualified from serving in the cause on trial.

SEC. 318. General causes of challenge are: 1st. A conviction for felony; 2d. A want of any of the qualifications prescribed by statute to render a person a competent juror; 3d. Unsoundness of mind, or such defect in the

faculties of the mind or the organs of the body, as renders him incapable of performing the duties of a juror.

SEC. 319. Particular causes of challenge are of two kinds: 1st. For such a bias as, when the existence of the fact is ascertained in judgment of law, disqualifies the juror, and which is known in this chapter as implied bias; 2d. For the existence of a state of mind on the part of the juror in reference to the case which, in the exercise of a sound discretion on the part of the court, leads to the inference that he will not act with entire impartiality, and which is known in this chapter as actual bias.

SEC. 320. A challenge for implied bias may be taken for all or any of the following causes, and for no other: 1st. Consanguinity or affinity within the fourth degree to the person alleged to be injured by the offence charged, or on whose complaint the prosecution was instituted, as to the defendant; 2d. Standing in the relation of guardian and ward, attorney and client, master and servant, or landlord and tenant, or being a member of the family of the defendant, or of the person alleged to be injured by the offence charged, or on whose complaint the prosecution was instituted, or in his employment on wages; 3d. Being a party adverse to the defendant in a civil action, or having complaint against, or being accused by him in a criminal prosecution; 4th. Having served on the grand jury which found the indictment, or on a coroner's jury which inquired into the death of a person whose death is the subject of the indictment; 5th. Having served on a trial jury which has tried another person for the offence charged in the indictment; 6th. Having been one of a jury formerly sworn to try the same indictment, and whose verdict was set aside, or which was discharged without a verdict, after the case was submitted to it; 7th. Having a served as a juror in a civil action brought against the defendant, for the act charged as an offence; 8th. Having formed or expressed an unqualified opinion or belief that the prisoner is guilty or not guilty of the offence charged; 9th. If the offence charged be punishable with death, the entertaining of such conscientious opinion as would preclude his finding the defendant guilty; in which case he shall neither be permitted nor compelled to serve as a juror.

SEC. 321. An exemption from service on a jury is not a cause of challenge, but the privilege of the person exempted.

SEC. 322. In a challenge for implied bias, one or more of the causes stated in section three hundred and twenty must be alleged. In a challenge for actual bias, it must be alleged that the juror is biassed against the party challenging. In either case the challenge may be oral, but must be entered on the minutes of the court.

SEC. 323. The adverse party may except to the challenge in the same manner as to a challenge to the panel, and the same proceedings shall be had thereon as prescribed as to the panel or individual person, except that if the exception be allowed, the juror shall be excluded. He may orally deny the facts alleged as the ground of challenge.

SEC. 324. If the facts be denied, the challenge shall be tried by the court.

SEC. 325. Upon the trial of a challenge to an individual juror, the juror challenged may be examined as a witness to prove or disprove the challenge,

and shall be compelled to answer every question pertinent to the inquiry therein.

SEC. 326. Other witnesses may also be examined on either side, and the rules of evidence applicable to the trial of other issues shall govern the admission or exclusion of testimony on the trial of the challenge.

SEC. 327. On the trial of the challenge, the court shall determine the law and the facts, and shall either allow or disallow the challenge, and direct an entry accordingly on the minutes.

SEC. 328. All challenges to an individual juror except peremptory, must be taken first by the defendant, and then by the Territory, and each party must exhaust all his challenges to each juror as he is called before the other begins.

SEC. 329. The challenges of either party need not all be taken at once, but they must be taken separately in the following order, including in each challenge all the causes of challenge belonging to the same class: 1st. To the panel; 2d. To an individual juror for a general disqualification; 3d. To an individual juror for an implied bias; 4th. To an individual juror for an actual bias.

SEC. 330. If all the challenges on both sides be disallowed, either party may still take a peremptory challenge, unless the peremptory challenges be exhausted.

Of the Trial.

SEC. 331. The jury having been empanelled and sworn, the trial shall proceed in the following order: 1st. If the indictment be for a felony, the clerk must read the indictment and state the plea of the defendant to the jury. In all other cases this formality may be dispensed with; 2d. The attorney-general or other counsel for the Territory must open the cause and offer the evidence in support of the indictment; 3d. The defendant or his counsel may then open the defence, and offer his evidence in support thereof; 4th. The parties may then respectively offer rebutting testimony only, unless the court for good reason, in furtherance of justice, permit them to offer evidence upon their original cause.

SEC. 332. When the evidence is concluded, the party for the prosecution shall state the grounds upon which he relies to the jury; the party holding the negative shall then reply; and the party holding the affirmative conclude the argument, unless the court for cause shall otherwise direct.

SEC. 333. If the indictment be for an offence punishable with death, two counsel on each side may argue the cause to the jury, in which case they must do so alternately. If it be for any other offence, the court may in its discretion restrict the argument to one counsel on each side.

SEC. 334. A defendant in a criminal action is presumed to be innocent until the contrary be proved, and in case of a reasonable doubt whether his guilt be satisfactorily shown, he is entitled to be acquitted.

SEC. 335. When it legally appears that a defendant has committed a pub-

lic offence, and there is reasonable ground of doubt in which of two or more degrees he is guilty, he can be convicted of the lowest of such degrees only.

SEC. 336. When two or more defendants are jointly indicted for a felony, any defendant requiring it shall be tried separately. In other cases, the defendants jointly indicted shall be tried separately or jointly, in the discretion of the court.

SEC. 337. When two or more persons are indicted in the same indictment, the court may at any time before the defendant has gone into his defence, on the application of the attorney for the Territory, direct any defendant to be discharged from the indictment, that he may be a witness for the Territory.

SEC. 338. When two or more persons are included in the same indictment, and the court is of opinion that in regard to a particular defendant there is not sufficient evidence to put him on his defence, it shall order him to be discharged from the indictment, before the evidence shall be deemed closed, that he may be a witness for his co-defendant.

SEC. 339. The order mentioned in the last two sections shall be deemed an acquittal of the defendant discharged, and shall be a bar to another prosecution for the same offence.

SEC. 340. Upon a trial for treason, the defendant cannot be convicted unless upon the testimony of two witnesses to the same overt act, or upon confession in open court.

SEC. 341. Upon a trial for treason, evidence shall not be admitted for an overt act not expressly charged in the indictment, nor shall the defendant be convicted unless one or more overt acts be expressly alleged therein.

SEC. 342. Upon a trial for conspiracy, in a case where an overt act is required by law to constitute the offence, the defendant cannot be convicted unless one or more overt acts be expressly alleged in the indictment, nor unless one or more of the acts alleged be proved; but other overt acts, not alleged in the indictment, may be given in evidence.

SEC. 343. Proof of actual penetration into the body is sufficient to sustain an indictment for rape or for the crime against nature.

SEC. 344. A conviction cannot be had upon the testimony of an accomplice, unless he be corroborated by such other evidence as shall tend to connect the defendant with the commission of the offence; and the corroboration shall not be sufficient if it merely show the commission of the offence or the circumstances thereof.

SEC. 345. Upon a trial for having, with an intent to cheat or defraud another designedly by any false pretence, obtained the signature of any person to a written instrument, or having obtained from any person any money, personal property, or valuable thing, no evidence shall be admitted of a false pretence expressed in language and unaccompanied by a false token or writing, unless the pretence or some note or memorandum thereof be in writing, either subscribed by or in the handwriting of the defendant.

SEC. 346. The last section shall not apply to a prosecution for falsely representing or personating another, and in such assumed character receiving any money or property.

SEC. 347. Upon a trial for having, under promise of marriage, seduced and had illicit connexion with an unmarried female of previous chaste character, the defendant shall not be convicted upon the testimony of the person injured, unless she be corroborated by other evidence tending to connect the defendant with the commission of the offence.

SEC. 348. If it appear by the testimony that the facts proved constitute an offence of a higher nature than that charged in the indictment, the court may direct the jury to be discharged and all proceedings on the indictment to be superseded, and may order the defendant to be committed or continued on, or admitted to bail, to answer any new indictment which may be found against him for the higher offence.

SEC. 349. If an indictment for a higher offence be dismissed by the grand jury, or be not found at or before the next term, the court shall again proceed to try the defendant on the original indictment.

SEC. 350. The court may also direct the jury to be discharged when it appears that it has not jurisdiction of the offence, or that the facts charged in the indictment do not constitute an offence punishable by law.

SEC. 351. If the jury be discharged because the court has not jurisdiction of the offence charged in the indictment, and it appear that it was committed out of the jurisdiction of this Territory, it shall order the defendant to be discharged.

SEC. 352. If the offence were committed within the exclusive jurisdiction of another county of this Territory, the court shall direct the defendant to be committed for such time as shall be deemed reasonable, to await a warrant from the proper county for his arrest; or, if the offence be a misdemeanor only, it may admit him to bail in a recognizance, with sufficient securities that he will, within such time as the court may appoint, render himself amenable to a warrant for his arrest from the proper county, and, if not sooner arrested thereon, will attend at the office of the sheriff of the county where the trial was had, at a certain time particularly designated in the recognizance, to surrender himself upon the warrant, if issued; or that his bail will forfeit such sum as the court may fix, and to be mentioned in the recognizance.

SEC. 353. In the case provided for in the last section, the clerk shall forthwith transmit a certified copy of the indictment and of all the papers filed in the action to the attorney prosecuting of the proper county, the expense of which transmission shall be chargeable to that county.

SEC. 354. If the defendant be not arrested, as hereinbefore provided, on a warrant from the proper county, he shall be discharged from custody, or his bail in the action shall be exonerated, or money deposited instead of bail shall be refunded, as the case may be, and the securities in the recognizance shall be discharged.

SEC. 355. If he be arrested, the same proceedings shall be had thereon

as upon the arrest of a defendant in another county, on a warrant of arrest issued by a magistrate.

SEC. 356. If the jury be discharged because the facts as charged do not constitute an offence punishable by law, the court shall order that the defendant, if in custody, be discharged; or if admitted to bail, that his bail be exonerated; or if he have deposited money instead of bail, that the money deposited be refunded to him, unless in the opinion of the court a new indictment can be framed upon which the defendant can be legally convicted, in which case it may direct that the case be submitted to the same or another grand jury.

SEC. 357. If the court direct that the case be submitted anew, the same proceedings must be had thereon as are prescribed in sections two hundred and sixty and two hundred and sixty-one, both inclusive.

SEC. 358. If at any time the evidence on either side is closed and the court deem the same insufficient to warrant a conviction, it may advise the jury to acquit the defendant. But the jury shall not be bound by such advice, nor shall the court for any cause prevent the jury from giving a verdict, except as provided in sections three hundred and thirty-seven and three hundred and thirty-eight, three hundred and forty-eight and three hundred and fifty.

SEC. 359. Whenever in the opinion of the court it is proper that the jury should view the place in which the offence is charged to have been committed, or in which any other material fact occurred, it may order the jury to be conducted in a body, in the custody of the sheriff, to the place, which shall be shown to them by a person appointed by the court for that purpose.

SEC. 360. No person shall be suffered to speak to the jury on any subject connected with the trial, and the officer shall return them into court without unnecessary delay, or at a specified time.

SEC. 361. If a juror have any personal knowledge respecting a fact in a controversy in a case, he must disclose the same in open court during the trial. If, during the retirement of the jury, a juror declare any fact which could be evidence in the cause as of his own knowledge, the jury must return into court. In either of these cases the juror making the statement must be sworn as a witness, and examined in the presence of the parties.

SEC. 362. The jurors sworn to try an indictment may, at any time before the submission of the cause to the jury, in the discretion of the court, be permitted to separate, or be kept in charge of a proper officer. The officer shall be sworn to keep the jurors together until the next meeting of the court, to suffer no person to speak to them, nor speak to themselves on any subject connected with the trial, and to return them into court at the next meeting thereof.

SEC. 363. The jury shall also, at each adjournment of the court, whether they be permitted to separate or be kept in charge of officers, be admonished by the court that it is their duty not to converse among themselves or with any one else on any subject connected with the trial, or to form or express any opinion thereon, until the cause is finally submitted to them.

SEC. 364. If, before the conclusion of the trial, a juror becomes sick, so

as to be unable to perform his duty, the court may order him to be discharged. In that case a new juror may be sworn, and the trial begin anew, or the jury may be discharged, and a new jury then or afterwards empannelled.

SEC. 365. The court shall decide all questions of law which shall arise in the course of the trial.

SEC. 366. On the trial of an indictment for libel, the jury shall have the right to determine the law and the fact.

SEC. 367. On the trial of an indictment for any other offence than libel, questions of law are to be decided by the court, saving the right of the defendant to except questions of fact by the jury. And although the jury have the power to find a general verdict, which includes questions of law as well as of fact, they are bound, nevertheless, to receive as law what is laid down as such by the court.

SEC. 368. In charging the jury, the court shall state to them all such matters of law as it shall think necessary for their information in giving their verdict.

SEC. 369. Either party may present to the court any written charge, and request that it may be given. If the court think it correct and pertinent, it shall be given; if not, it shall be refused.

SEC. 370. Upon each charge so presented and given or refused, the court shall endorse its decision and shall sign it. If part be given and part refused, the court shall distinguish, showing by the endorsement what part of the charge was given and what part refused.

SEC. 371. After hearing the charge, the jury may either decide in court or may retire for deliberation. If they do not agree without retiring, one or more officers must be sworn to keep them together in some private and convenient place, and not to permit any person to speak to them, nor to speak to them themselves unless it be to ask them whether they have agreed upon a verdict, and to return them into court when they have so agreed.

SEC. 372. Where a defendant having given bail, appears for trial, the court may in its discretion at any time after his appearance for trial order him to be committed to the custody of the proper officer of the county to abide the judgment or further order of the court, and he shall be committed and held in custody accordingly.

Conduct of the Jury after the Case is submitted to Them.

SEC. 373. A room shall be provided by the sheriff of each county for the use of the jury upon their retirement for deliberation, with suitable furniture, fuel, lights, and stationery. If the sheriff neglect, the court may order him to do so, and the expenses incurred by him in carrying the order into effect, when certified by the court, shall be a county charge.

SEC. 374. While the jury are kept together, either during the progress of the trial or after their retirement for deliberation, they shall be provided

by the sheriff, at the expense of the county, with suitable and sufficient food and lodging.

SEC. 375. Upon retiring for deliberation, the jury may take with them all papers (except depositions) which have been received as evidence in the case, or copies of such parts of public records or private documents given in evidence as ought not, in the opinion of the court, to be taken from the person having them in possession.

SEC. 376. The jury may also take with them notes of the testimony or other proceedings on the trial taken by themselves, or any of them; but none taken by any other person.

SEC. 377. After the jury have retired for deliberation, if there be any disagreement between them as to any part of the testimony, or if they desire to be informed on any point of law arising in the cause, they must require the officer to conduct them into court. Upon being brought into court, the information required shall be given in the presence of, or after notice to the attorney-general, and the defendant and his counsel.

SEC. 378. If, after the retirement of the jury, one of them be taken so sick as to prevent the continuance of his duty, or any other accident or cause occur to prevent their being kept for deliberation, the jury may be discharged.

SEC. 379. Except as provided in the last section, the jury shall not be discharged after the cause is submitted to them, until they have agreed upon their verdict and rendered it in open court, unless by consent of both parties entered upon the minutes, or, unless at the expiration of such time as the court shall deem proper, it satisfactorily appear that there is no reasonable probability that the jury can agree.

SEC. 380. In all cases where a jury are discharged, or prevented from giving a verdict by reason of any accident or other cause, except where the defendant is discharged from the indictment during the progress of the trial, or after the cause is submitted to them, the cause may be again tried at the same or another term.

SEC. 381. While the jury are absent, the court may adjourn from time to time as to other business, but it shall nevertheless be deemed to be open for every purpose connected with the cause submitted to the jury, until a verdict be rendered or the jury discharged.

SEC. 382. A final adjournment of the court discharges the jury.

The Verdict.

SEC. 383. When a jury have agreed upon a verdict, they must be conducted into court by the officer having them in charge. Their names must then be called, and if all do not appear, the rest shall be discharged without giving a verdict. In such case the cause may be again tried at the same or another term.

SEC. 384. If the indictment be for a felony, the defendant must, before

the verdict, appear in person. If it be for a misdemeanor, the verdict may be rendered in his absence.

SEC. 385. If the jury appear, they shall be asked by the court or clerk whether they have agreed upon their verdict, and if the foreman answer in the affirmative, they shall, on being required, declare the same.

SEC. 386. The jury may either render a verdict, or when they are in doubt as to the legal effect of the facts proved, they may, except upon an indictment for libel, file a special verdict.

SEC. 387. A general verdict upon a plea of not guilty, is either "guilty" or "not guilty," which imports a conviction or acquittal on every material allegation in the indictment. Upon a plea of a former conviction or acquittal of the same offence, it is either "For the Territory" or "For the defendant."

SEC. 388. A special verdict is that by which the jury find the facts only, leaving the judgment to the court. It must present the conclusions of fact as established by the evidence, and not the evidence to prove them; and these conclusions of fact must be so presented as that nothing remains to the court but to draw conclusions of law upon them.

SEC. 389. The special verdict must be reduced to writing by the jury, or in their presence entered upon the minutes of the court, read to the jury, and agreed to by them before they are discharged.

SEC. 390. The special verdict need not be in any particular form, but shall be sufficient if it present intelligibly the facts found by the jury.

SEC. 391. The court shall give judgment upon the special verdict, as follows:—First. If the plea be not guilty, and the facts prove the defendant guilty of the offence charged in the indictment, or of any other offence of which he could be convicted as provided in section three hundred and ninety-three under that indictment, judgment shall be given accordingly. But if the facts found do not prove the defendant guilty of the offence charged, or of any offence of which he could be so convicted under the indictment, judgment of acquittal shall be given. Second. If the plea be a former conviction or acquittal of the same offence, the court shall give judgment of acquittal or conviction according as the facts prove the former conviction or acquittal.

SEC. 392. If the jury do not, in a special verdict, pronounce affirmatively or negatively on the facts necessary to enable the court to give judgment, or if they find the evidence of facts merely, and not the conclusions of facts from the evidence as established to their satisfaction, the court shall order a new trial.

SEC. 393. In all cases the defendant may be found guilty of any offence, the commission of which is necessarily included in that with which he is charged in the indictment, or may be found guilty of an attempt to commit the offence charged.

SEC. 394. On an indictment against several, if the jury cannot agree upon a verdict as to all, they may render a verdict as to those in regard to

whom they do agree, on which a judgment shall be entered accordingly, and the case as to the rest may be tried by another jury.

SEC. 395. Where there is a verdict of conviction, in which it appears to the court that the jury have mistaken the law, the court may explain the reason for that opinion, and direct the jury to reconsider their verdict, and if after such reconsideration they return the same verdict, it must be entered; but when there is a verdict of acquittal, the court cannot require the jury to reconsider it.

SEC. 396. If the jury render a verdict which is neither a general nor a special verdict, as hereinbefore defined, the court may direct them to reconsider it, and it shall not be recorded until it be rendered in some form from which it can be clearly understood what is the intent of the jury, whether to render a general verdict or to find the facts specially, and to leave the judgment to the court.

SEC. 397. If the jury persist in finding an informal verdict, from which, however, it can be clearly understood that their intention is to find in favor of the defendant upon the issue, it shall be entered in the terms in which it is found, and the court shall give judgment of acquittal; but no judgment of conviction can be given unless the jury find expressly against the defendant upon the issue, or judgment be given against him on a special verdict.

SEC. 398. When a verdict is rendered, and before it is recorded, the jury may be polled on the requirement of either party; in which case they shall be severally asked whether it be their verdict, and if any one answer in the negative, the jury shall be sent out for further deliberation.

SEC. 399. When the verdict is given, and is such as the court may receive, the clerk must immediately record it in full on the minutes, and must read it to the jury and inquire of them whether it be their verdict. If any juror disagree, the fact must be entered in the minutes and the jury again sent out; but if no disagreement be expressed, the verdict is complete and the jury must be discharged from the case.

SEC. 400. If judgment of acquittal be given on a general verdict, and the defendant be not detained for any other legal cause, he must be discharged as soon as the judgment is given, except that where the acquittal is at variance between the proof and the indictment, which may be obviated by a new indictment, the court may order his detention, to the end that a new indictment may be prepared in the same manner and with like effect as hereinbefore provided.

SEC. 401. If a general verdict be rendered against the defendant, or a special verdict be given, he may be remanded, if in custody; or if on bail, he must be committed to the proper officers of the county, to await the judgment of the court upon the verdict. If so committed, his bail shall be exonerated; or if money be deposited instead of bail, it shall be refunded to the defendant.

Of the Proceedings after Trial and before Judgment.

Bill of Exceptions.

SEC. 402. On the trial of an indictment, exceptions may be taken by the defendant to a decision of the court upon a matter of law, in any of the following cases:—1st. In disallowing a challenge to the panel of the jury, or to an individual juror for an implied bias; 2d. On admitting or rejecting witnesses or testimony; 3d. In admitting or rejecting witnesses or testimony, or in deciding any question of law not a matter of discretion, or in charging or instructing the jury upon the law on the trial of the issue.

SEC. 403. The exceptions may be taken by the attorney-general or other counsel for the Territory, to a decision of the court upon a matter of law in any of the cases specified in the third subdivision of the preceding section.

SEC. 404. A bill containing the exceptions must be settled and signed by the judge, and filed with the clerk within ten days after the trial of the cause, unless further time be granted by said judge, or by a judge of the supreme court.

SEC. 405. The bill of exceptions shall contain so much of the evidence only as is necessary to present the questions of law upon which the exceptions were taken; and the judge shall, upon the settlement of the bill, whether agreed to by the parties or not, strike out evidence and other matters not material to the questions to be raised.

SEC. 406. The bill of exceptions must be filed with the clerk of the court as soon as it is signed by the judge.

SEC. 407. When any written charge has been presented and given or refused, the question or questions presented in such charge need not be excepted to, nor embodied in a bill of exceptions; but the written charge itself, with the endorsement showing the action of the court, shall form part of the record, and any error in the decision of the court thereon may be taken advantage of on appeal in like manner as is presented in a bill of exceptions.

New Trial.

SEC. 408. A new trial is a reëxamination of the issue in the same court before another jury, after a verdict has been given. It places the parties in the same condition as if no trial had been had; all the testimony must be produced anew, and the former verdict cannot be used or referred to, either in evidence or in argument.

SEC. 409. The court in which a trial is had upon the issue of facts, has power to grant a new trial where a verdict has been rendered against the defendant, upon his application in the following cases only:—1st. When the trial has been had in his absence, if the indictment be for felony; 2d. When the jury has received any evidence out of court, other than that resulting from a view as provided in section three hundred and fifty-nine; 3d. When the jury has separated without leave of the court after retiring

to deliberate upon their verdict, or been guilty of any misconduct tending to prevent a fair and due consideration of the case; 4th. When the verdict has been decided by lot, or by any means other than a fair expression of opinion on the part of the jurors; 5th. When the court has misdirected the jury in a matter of law; 6th. When the verdict is contrary to law or evidence. But no more than two new trials shall be granted for this cause alone.

SEC. 410. The application for a new trial must be made before the judgment is entered in the cause.

Arrest of Judgment.

SEC. 411. A motion in arrest of judgment is an application on the part of the defendant that no judgment be rendered on a plea or verdict of guilty, or on a verdict against the defendant on a plea of a former conviction or acquittal. It may be founded on any of the defects in the indictment mentioned in section two hundred and sixty-five.

SEC. 412. The court may also, on its own view of these defects, arrest the judgment without motion.

SEC. 413. The motion must be made before, or at the time when the defendant is called for judgment.

SEC. 414. The effect of allowing a motion for an arrest of judgment, is to place the defendant in the same situation in which he was before the indictment was found.

SEC. 415. If, from the evidence on the trial, there is reason to believe the defendant guilty, and a new indictment can be framed upon which he may be convicted, the court may order him to be re-committed to the officers of the proper county, or admitted to bail anew to answer the new indictment. If the evidence show him guilty of another offence, he shall be committed or held thereon, and in neither case shall the verdict be a bar to another prosecution or indictment. But if no evidence appear sufficient to charge him with any offence, he shall, if in custody, be discharged, or if admitted to bail his bail shall be exonerated, or if money have been deposited instead of bail, it shall be refunded to the defendant, and the arrest of judgment shall operate as an acquittal of the charge upon which the indictment was founded.

Of the Judgment and Execution.

The Judgment.

SEC. 416. After the plea or verdict of guilty, or after a verdict against the defendant, on a plea of a former conviction or acquittal, if the judgment be not arrested, or a new trial granted, the court shall appoint a time for pronouncing judgment.

SEC. 417. The time appointed shall be at least one day after the verdict, if the court intend to remain in session so long; or, if not, as remote a

time as can reasonably be allowed. But in no case shall the judgment be rendered in less than six hours after the verdict.

SEC. 418. For the purpose of judgment, if the conviction be for felony, the defendant must be personally present; if it be for a misdemeanor, judgment may be pronounced in his absence.

SEC. 419. When the defendant is convicted of a felony, if he be in custody, the court may direct the officer in whose custody he is to bring him before it for judgment, and the officer shall do so accordingly.

SEC. 420. If the defendant have been discharged on bail, or have deposited money instead thereof, and do not appear for judgment when his personal appearance is necessary, the court, in addition to the forfeiture of the recognizance, or of the money deposited, may direct the clerk to issue a bench warrant for his arrest.

SEC. 421. The clerk, on the application of the attorney for the Territory, may accordingly at any time after the order, whether the court be sitting or not, issue a bench warrant into one or more counties.

SEC. 422. The bench warrant shall be substantially in the following form:

COUNTY OF , TERRITORY OF ARIZONA.

To any sheriff, constable, marshal, or policeman in this Territory:

A. B. having been on the day of , A.D. 18 , duly convicted in the district court of the county of , of the crime of (designating it generally), you are therefore commanded forthwith to arrest the above-named A. B., and bring him before that court for judgment, or if the court have adjourned for the term, that you deliver him into the custody of the sheriff of the county of

Given under my hand, with the seal of said court affixed, this the day of , A.D. 18

By order of the court,

[*Seal.*] E. F., *Clerk.*

SEC. 423. The bench warrant may be served in any county, in the same manner as a warrant of arrest.

SEC. 424. Whether the bench warrant be served in the county in which it was issued, or in another county, the officer shall arrest the defendant and bring him before the court, or commit him to the officer mentioned in the warrant, according to the command thereof.

SEC. 425. When the defendant appears for judgment, he shall be informed by the court, or by the clerk under its direction, of the nature of the indictment, and of his plea, and the verdict, if any there are, and shall be asked whether he have any legal cause to show why judgment shall not be pronounced against him.

SEC. 426. He may show for cause against the judgment:—1st. That he is insane; and if in the opinion of the court there be reasonable ground for

believing him to be insane, the question of his insanity shall be tried as provided in sections five hundred and fifty-two to five hundred and fifty-five, both inclusive. If upon the trial of that question the jury find that he is of sound mind, judgment shall be pronounced; and if they find him insane, he shall be committed to the custody of some proper and suitable person until he become sane, and when notice is given of that fact, as provided in section five hundred and fifty-nine, he shall be brought before the court for judgment. 2d. That he has good cause to offer, either in arrest of judgment, or for a new trial; in which case the court may, in its discretion, order the judgment to be deferred, and proceed to decide upon the motion in arrest of judgment, or for a new trial.

SEC. 427. If no sufficient cause be alleged, or appear to the court why judgment should not be pronounced, it shall thereupon be rendered.

SEC. 428. If the defendant have been convicted of two or more offences before judgment on either, the judgment may be that the imprisonment upon any one may commence at the expiration of the imprisonment upon any other of the offences.

SEC. 429. A judgment that the defendant pay a fine may also direct that he be imprisoned until the fine be satisfied, specifying the extent of the imprisonment, which shall not exceed twenty days for every hundred dollars of the fine, or in that proportion.

SEC. 430. A judgment that the defendant shall pay a fine shall constitute a lien in like manner as a judgment for money rendered in a civil action.

SEC. 431. When judgment upon a conviction is rendered, the clerk shall enter the same in the minutes, stating briefly the offence for which the conviction had been had, and shall within five days annex together and file the following papers, which shall constitute the record of the action: First, a copy of the minutes of any challenge which may have been interposed by the defendant to the panel of the grand jury, or to any individual grand juror, and the proceedings thereon; Second, the indictment and a copy of the minutes of the plea or demurrer; Third, a copy of the minutes of any challenge which may have interposed to the panel of the trial jury or to an individual juror, and the proceedings thereon; Fourth, a copy of the minutes of the trial; Fifth, a copy of the minutes of the judgment; Sixth, the bill of exceptions, if there be one; Seventh, the written charges asked of the court, if there be any.

The Execution.

SEC. 432. Where a judgment has been pronounced, a certified copy of the entry thereof in the minutes shall be forthwith furnished to the officers whose duty it is to execute the judgment, and no other warrant or authority is necessary to justify or require the execution thereof, except where judgment of death is rendered.

SEC. 433. If the judgment be for a fine alone, execution may be issued thereon as on a judgment in a civil action.

SEC. 434. If the judgment be imprisonment or a fine and imprisonment

until it be satisfied, the defendant shall be forthwith committed to the custody of the proper officer, and by him detained until the judgment be complied with.

SEC. 435. When the judgment of death is rendered, a warrant, signed by the judge and attested by the clerk under the seal of the court, shall be drawn and delivered to the sheriff; it shall state the conviction and judgment, and appoint a day on which the judgment shall be executed, which shall not be less than thirty nor more than sixty days from the time of the judgment.

SEC. 436. The judge of a court at which a conviction requiring judgment of death shall have been had, shall immediately after the conviction transmit to the governor, by mail or otherwise, a statement of the conviction and judgment, and of the testimony given at the trial.

SEC. 437. The governor may thereupon require the opinion of the justices of the supreme court and the attorney-general, or of any of them, upon the statement so furnished.

SEC. 438. No judge, court, or officer other than the governor, can suspend the execution of a judgment of death, except the sheriff, as provided in the seven succeeding sections, unless an appeal be taken. When an appeal has been taken from a judgment of death, the appellate court and any judge thereof in vacation may suspend the execution until the appeal is heard and determined.

SEC. 439. If, after judgment of death, there be good reason to suppose that the defendant has become insane, the sheriff of the county, with the concurrence of the judge of the court by which the judgment was rendered, may summon a jury of twelve persons to inquire into the supposed insanity, and shall give immediate notice thereof to the attorney-general.

SEC. 440. The attorney-general shall attend the inquisition, and may produce witnesses before the jury, for which purpose he may issue process in the same manner as for witnesses to attend before the grand jury, and disobedience thereto may be punished in like manner as disobedience to process issued by that court.

SEC. 441. A certificate of the inquisition shall be signed by the jurors and the sheriff, and filed with the clerk of the court in which the conviction was had.

SEC. 442. If it be found by the inquisition that the defendant is sane, the sheriff shall execute the judgment; but if it be found that he is insane, the sheriff shall suspend the execution of the judgment until he receive a warrant from the governor or from the judge of the court by which the judgment was rendered, directing the execution of the judgment.

SEC. 443. If the inquisition find that the defendant is insane, the sheriff shall immediately transmit the same to the governor, who may, when the defendant becomes sane, issue a warrant appointing a day for the execution of the judgment.

SEC. 444. If there be good reason to suppose that a female, on whom a

judgment of death is rendered, is pregnant, the sheriff of the county, with the concurrence of the judge of the court by which the judgment was rendered, may summon a jury of three physicians to inquire into the supposed pregnancy; immediate notice thereof shall be given to the attorney-general, and the provisions of sections four hundred and forty and four hundred and forty-one shall govern the proceedings upon the inquisition.

SEC. 445. If it be found by the inquisition that such female is not pregnant, the sheriff shall execute the judgment. If it be found that she is pregnant, the sheriff shall suspend the execution of the judgment, and transmit the inquisition to the governor.

SEC. 446. When the governor is satisfied that such female is no longer pregnant, he may issue his warrant appointing a day for the execution of the judgment.

SEC. 447. If, for any reason, a judgment of death shall not have been executed, and the same remain in force, the court in which the conviction was had, on the application of the attorney-general, shall order the defendant to be brought before it, or if he be at large a warrant for his apprehension may be issued.

SEC. 448. Upon the defendant being brought before the court it shall inquire into the facts, and if no legal reason exist against the execution of the judgment, shall make an order that the sheriff of the proper county execute the judgment at the time specified therein, and the sheriff shall execute the judgment accordingly.

SEC. 449. The punishment of death shall be inflicted by hanging the defendant by the neck until he be dead.

OF APPEALS.

Appeals when allowed, and how taken.

SEC. 450. The party aggrieved in a criminal action, whether that party be the Territory or defendant, may appeal as follows: 1st. To the district court of the county from a final judgment of a justice of the peace; 2d. To the supreme court from a final judgment of the district court in all criminal cases amounting to felony, when judgment is rendered in an action or proceeding originally commenced in the district court, or brought into the district court on appeal. Also, from an order of the district court granting or refusing a new trial, or which affects a substantial right in a criminal case amounting to felony, commenced in the said district court.

SEC. 451. The appeal to the supreme court from the district court can be taken on questions of law alone.

SEC. 452. The party appealing shall be known as the appellant, and the adverse party as the respondent.

SEC. 453. Upon the appeal, any decision of the court in an intermediate order or proceeding forming a part of the record, may be revised.

SEC. 454. An appeal must be taken within one year after the judgment was rendered.

SEC. 455. An appeal must be taken by the service of a notice in writing on the clerk of the court in which the action was tried, stating that the appellant appeals from the judgment.

SEC. 456. If the appeal be taken by the defendant, a similar notice must be served on the attorney-general acting for the county in which the judgment was rendered.

SEC. 457. If it be taken by the Territory, a similar notice must be served upon the defendant, if he be a resident of the county; or if not, on the counsel, if any, who appeared for him on trial, if he be living within the county. If such service, after due diligence, cannot be made, the appellate court, upon proof thereof, shall make an order for the publication of due notice in some newspaper, and for such time as it may deem proper.

SEC. 458. At the expiration of the time appointed for the publication, on filing an affidavit of the publication, the appeal shall be deemed perfected.

SEC. 459. An appeal taken by the Territory shall in no case stay or affect the operation of a judgment in favor of the defendant, until judgment is reversed.

SEC. 460. No appeal from a judgment of conviction, unless it be on imposing a fine only, shall stay the execution of the judgment; but the defendant, if in custody, shall remain in custody to abide the judgment upon the appeal, unless admitted to bail, as prescribed in section four hundred and eighty-three.

SEC. 461. Upon the appeal being taken, the clerk with whom the notice of appeal is filed must, within thirty days thereafter, without charge, transmit to the clerk of the supreme court a copy of the notice of appeal and of the record.

Dismissing an Appeal for Irregularity.

SEC. 462. If the appeal be irregular in any substantial particular, but not otherwise, the appellate court may, on any day in term, on motion of the respondent upon five days' notice, with copies of the papers upon which the motion is founded, order the same to be dismissed.

SEC. 463. The court may also upon like motion dismiss the appeal, if the return be not made as provided in section four hundred and sixty-one, unless for good cause it enlarge the time for that purpose.

Argument of the Appeal.

SEC. 464. All appeals in criminal cases shall be tried and determined at the first term of the appellate court after the record is filed.

SEC. 465. Judgment of affirmance may be granted without argument, if

the appellant fail to appear. But judgment of reversal can only be given upon argument, though the respondent fail to appear.

SEC. 466. Upon the argument of the appeal, if the offence be punishable with death, two counsel shall be heard on each side, if they require it. In any other case, the court may, in its discretion, restrict the argument to one counsel on each side. The counsel for the defendant shall be entitled to the closing argument.

SEC. 467. The defendant need not appear in the appellate court.

Judgment upon Appeal.

SEC. 468. After hearing the appeal, the court shall give judgment without regard to technical error or defect, which does not affect the substantial rights of the parties.

SEC. 469. The appellate court may reverse, affirm, or modify the judgment appealed from, and may, if necessary or proper, order a new trial.

SEC. 470. When a new trial is ordered, it must be directed to be had in the court of the county from which the appeal was taken.

SEC. 471. If a judgment against the defendant be reversed, without ordering a new trial, the appellate court shall direct, if he be in custody, that he be discharged therefrom; or if he be admitted to bail, that his bail be exonerated; or if money be deposited instead of bail, that it be refunded to the defendant.

SEC. 472. On a judgment of affirmance against the defendant, the original judgment shall be carried into execution, as the appellate court may direct.

SEC. 473. When the judgment of the appellate court is given, it shall be entered in the minutes, and a certified copy of the entry shall be forthwith remitted to the clerk of the court from which the appeal was taken.

SEC. 474. The papers returned to the appellate court shall there remain of record, and shall not be remitted to the court below.

SEC. 475. After the certificate of judgment has been remitted, as hereinbefore provided, the appellate court shall have no further jurisdiction of the appeal, or of the proceedings thereon; and all orders which may be necessary to carry the judgment into effect, shall be made by the court to which the certificate is remitted.

In what Cases the Defendant may be admitted to Bail.

SEC. 476. Admission to bail is the order of a competent court or magistrate that the defendant be discharged from actual custody upon the taking of bail.

SEC. 477. The taking of bail consists in the acceptance by a competent

court or magistrate, of the recognizance of sufficient bail for the appearance of the defendant, according to the terms of the recognizance, or that the bail will pay to the Territory a specified sum.

SEC. 478. A person charged with an offence may be admitted to bail before conviction as follows: First. As a matter of discretion in all cases where the punishment is death; Second. As a matter of right in all other cases.

SEC. 479. No person shall be admitted to bail where he is charged with an offence punishable with death, when the proof is evident or the presumption great.

SEC. 480. When the admission to bail is a matter of discretion, the court or officer by whom it may be ordered shall require such notice of the application therefor as he may deem reasonable to be given to the attorney-general, if in the county where the examination is had.

SEC. 481. After conviction of an offence not punishable with death, a defendant who has appealed may be admitted to bail: First. As a matter of right where the appeal is from a judgment imposing a fine only; Second. A matter of discretion in all other cases.

SEC. 482. Before conviction a defendant may be admitted to bail: First. For his appearance before the magistrate on the examination of the charge before being held to answer; Second. To appear at the court to which the magistrate is required to return the depositions and statement upon the defendant being held to answer after examination; Third. After indictment, either before the bench warrant issued for his arrest, or upon any order of the court commuting or enlarging the amount of bail, or upon his being surrendered by his bail to answer the indictment in the court in which it is found, or to which it may be sent or removed for trial.

SEC. 483. After conviction and upon an appeal, the defendant may be admitted to bail as follows: First. If the appeal be from a judgment imposing a fine only on the recognizance of the bail that he will pay the same, or such part of it as the appellate court may direct, if the judgment be affirmed or modified, or the appeal be dismissed; Second. If judgment of imprisonment have been given that he will surrender himself in execution of the judgment, upon its being confirmed or modified, or upon the appeal being dismissed.

Bail—Upon being held to Answer before Indictment.

SEC. 484. When the defendant has been held to answer by the examining magistrate, the admission to bail may be by the magistrate by whom he is so held, or by any magistrate who has the power to issue the writ of *habeas corpus*.

SEC. 485. Bail is put in by a written recognizance, executed by two sufficient sureties (with or without the defendant, in the discretion of the court or magistrate), and acknowledged before the court or magistrate in substantially the following form: "An order having been made on the —— day of ——, A. D. 18—, A. B., a justice of the peace of ——— county (or

as the case may be), that C. D., held to answer upon a charge of (stating briefly the nature of the offence), upon which he has been duly admitted to bail in the sum of —— dollars; We, E. F. and G. H. (stating their place of residence), hereby undertake that the above-named C. D. shall appear and answer the charge above mentioned in the district court, and shall at all times hold himself amenable to the orders and process of the court, and if convicted, shall appear for judgment, and render himself in execution thereof; or if he fail to perform either of these conditions, that he will pay to the Territory of Arizona the sum of —— dollars" (inserting the sum in which the defendant is admitted to bail).

SEC. 486. The qualifications of bail are as follows: First: Each of them must be a resident and a householder or freeholder within the Territory; Second. They must each be worth the amount specified in the recognizance, exclusive of property exempt from execution; but the court or magistrate, on taking bail, may allow more than two bail to justify severally in amounts less than that expressed in the recognizance, if the whole justification be equivalent to that of two sufficient bail.

SEC. 487. The bail shall in all cases justify by affidavit taken before the court or magistrate, as the case may be. The affidavit must state that they each possess the qualifications provided in the preceding section.

SEC. 488. The court or magistrate may thereupon further examine the bail upon oath concerning their sufficiency, in such manner as the court or magistrate may deem proper.

Bail upon Indictment before Conviction.

SEC. 489. When the offence charged in the indictment is not capital, the officer serving the bench warrant shall, if required, take the defendant before a magistrate in the county in which it is issued or in which he is arrested, for the purpose of giving bail as prescribed in sections two hundred and forty-one and two hundred and forty-four.

SEC. 490. If the offence charged in the indictment be capital, the officer arresting the defendant shall deliver him into custody according to the command of the bench warrant, as prescribed in section two hundred and thirty-nine.

SEC. 491. When the defendant is so delivered into custody, he shall be held by the sheriff unless admitted to bail on examination, upon a writ of *habeas corpus*.

SEC. 492. The bail must be put in by a written recognizance executed by two sufficient sureties (with or without the defendant, in the discretion of the court or magistrate), and acknowledged before the court or magistrate in substantially the following form:

"An indictment having been found on the —— day of ———, A. D. 18—, in the district court of the county of —— (as the case may be), charging A. B. with the crime of (designating it generally), and he having been duly admitted to bail in the sum of —— dollars, We, C. D. and E. F. (stating their place of residence), hereby undertake that the above-named A. B. shall appear and answer the indictment above mentioned in said

court, and shall at all times render himself amenable to the orders and process of the court, and if convicted shall appear for judgment and render himself in execution thereof; or if he fail to perform either of these conditions, that we will pay to the territory of Arizona the sum of —— dollars (inserting the sum in which the defendant is admitted to bail)."

SEC. 493. The provisions contained in sections four hundred and eighty-six to four hundred and eighty-eight, both inclusive, in relation to bail, shall apply to the qualifications of the bail and to all the proceedings respecting the putting in and justifying of bail and incident thereto.

Bail on Appeal.

SEC. 494. In the cases in which the defendant may be admitted to bail upon an appeal to the supreme court, the order admitting him to bail may be made by any magistrate having the power to issue a writ of *habeas corpus*.

SEC. 495. When the admission to bail is a matter of discretion, the court or officer by whom it may be ordered shall require such notice of the application therefor as he may deem reasonable to be given to the attorney-general.

SEC. 496. The bail must possess the qualifications and must be put in all respects as above provided, except that the condition of the recognizance shall be to the effect that the defendant will in all respects abide the orders and judgment of the appellate court upon the appeal.

Deposit instead of Bail.

SEC. 497. The defendant, at any time after an order admitting him to bail, instead of giving bail may deposit with the clerk of the court in which he is held to answer the sum mentioned in the order, and upon delivering to the officer in whose custody he is a certificate of the deposit, he shall be discharged from custody.

SEC. 498. If the defendant have given bail, he may at any time before the forfeiture of the recognizance in like manner deposit the sum mentioned in the recognizance, and upon the deposit being made the bail shall be exonerated.

SEC. 499. When the money has been deposited, if it remain on deposit at the time of a judgment for the payment of a fine, the clerk shall, under the direction of the court, apply the money in satisfaction thereof, and, after satisfying the fine and costs, shall refund the surplus, if any, to the defendant.

Surrender of the Defendant.

SEC. 500. At any time before the forfeiture of their recognizance, the bail may surrender the defendant in their exoneration, or he may surrender himself to the officer to whose custody he was committed, at time of giving bail, in the following manner:

SEC. 501. A certified copy of the recognizance of bail shall be delivered to the officer, who shall detain the defendant in his custody thereon as upon a commitment, and shall, by a certificate in writing, acknowledge the surrender. Second. Upon the recognizance and a certificate of the officer, the court in which the action is pending may, upon notice of five days to the attorney-general, with a copy of the recognizance and certificate, order that the bail be exonerated, and on filing the order and the papers used on the application, they shall be exonerated accordingly.

SEC. 502. For the purpose of surrendering the defendant, the bail, at any time before they are discharged, and at any place within the Territory, may themselves arrest him, or, by a written authority endorsed on a certified copy of the recognizance, may empower any person of suitable age and discretion to do so.

SEC. 503. If money have been deposited instead of bail, and the defendant at any time before the forfeiture thereof shall surrender himself to the officer to whom the commitment was directed, in the manner provided in the last two sections, the court shall order a return of the deposit to the defendant, upon producing the certificate of the officer showing the surrender, and upon a notice of five days to the attorney-general, with a copy of the certificate.

Forfeiture of the Recognizance, or of the Deposit of Money.

SEC. 504. If, without sufficient excuse, the defendant neglect to appear for arraignment, or for trial or judgment, or upon any other occasion, when his presence in court may be lawfully required, or to surrender himself in execution of the judgment, the court shall direct the fact to be entered upon its minutes, and the recognizance, or the money deposited instead of bail, as the case may be, shall thereupon be declared forfeited.

SEC. 505. If, at any time before the final adjournment of the court, the defendant appear and satisfactorily excuse his neglect, the court may direct the forfeiture of the recognizance or the deposit to be discharged upon such terms as may be just.

SEC. 506. If the forfeiture be not discharged, as provided in the last section, the attorney-general may, at any time after the adjournment of the court, proceed by action only against the bail upon their recognizance.

SEC. 507. If in any such case, by reason of the neglect of the defendant to appear, the money deposited instead of bail is forfeited, and the forfeiture be not discharged or remitted, as hereinbefore provided, the clerk with whom it is deposited shall, immediately after the final adjournment of the court, pay over the money deposited to the county treasurer, or attorney-general, as the court may order.

Re-commitment of the Defendant after having given Bail.

SEC. 508. The court to which the committing magistrate shall return the depositions and statement, or in which an indictment or an appeal is pending, or to which a judgment on appeal is remitted to be carried into effect,

may, by an order to be entered on its minutes, direct the arrest of the defendant, and his commitment to the officer to whose custody he was committed at the time of giving bail, and his detention until legally discharged, in the following cases: 1st. When by reason of his failure to appear he has incurred a forfeiture of his bail, or of money deposited thereof. 2d. When it satisfactorily appears to the court that his bail, or either of them, are dead or insufficient, or have removed from the Territory. 3d. Upon an indictment being found in the cases where bail may be required in an increased amount.

SEC. 509. The order for the recommitment of the defendant shall recite generally the facts upon which it is founded, and shall direct that the defendant be arrested by any sheriff, constable, marshal, or policeman within this Territory, and committed to the custody of the sheriff of the county where the depositions and statement were returned, or the indictment was found, or the conviction was had, as the case may be, to be detained until legally discharged.

SEC. 510. The defendant may be arrested pursuant to the order, upon a certified copy thereof, in any county, in the same manner as upon a warrant of arrest.

SEC. 511. If the order recite as the grounds upon which it is made the failure of the defendant to appear for judgment upon conviction, the defendant must be committed according to the requirement of the order.

SEC. 512. If the order be made for any other cause, and the offence be bailable, the court may fix the amount of bail, and may cause a direction to be inserted in the order that the defendant be admitted to bail in the sum affixed, which shall be specified in the order.

SEC. 513. When the defendant is admitted to bail, the bail may be taken by any magistrate in the county having authority in a similar case to admit to bail upon the holding the defendant to answer before an indictment, as prescribed in section four hundred and eighty-four, or by any other magistrate to be designated by the court.

SEC. 514. When bail is taken upon the recommitment of the defendant, the recognizance shall be in substantially the following form:

An order having been made on the day of , A. D. 18 , by the court (naming it), that A. B. be admitted to bail in the sum of dollars in an action pending in that court against him in behalf of the Territory of Arizona, upon (presentment, indictment, or appeal, as the case may be), we, C. D. and E. F., of (stating their place of residence), hereby undertake that the above-named A. B. shall appear in that or any other court in which his appearance may be lawfully required upon that (information, presentment, indictment, or appeal, as the case may be), and shall at all times render himself amenable to its orders and processes, and appear for judgment and surrender himself in execution thereof; or if he fail to perform either of these conditions, that he will pay to the Territory of Arizona the sum of dollars (insert the sum in which the defendant is admitted to bail).

SEC. 515. The bail must possess the qualifications, and must be put in, in all respects, in the manner heretofore prescribed.

Of Miscellaneous Proceedings.

Compelling the Attendance of Witnesses.

SEC. 516. The process by which the attendance of a witness before a court or magistrate is required, is a subpœna.

SEC. 517. A magistrate before whom an information is laid may issue subpœnas, subscribed by him for witnesses within the Territory, either on behalf of the Territory or the defendant.

SEC. 518. The attorney-general may issue subpœnas, subscribed by him for witnesses within the Territory, in support of the prosecution, or for such other witnesses as the grand jury, upon any investigation pending before them, may direct.

SEC. 519. The attorney-general may in like manner issue subpœnas subscribed by him, for witnesses within the Territory, in support of an indictment, to appear before the court at which it is to be tried.

SEC. 520. The clerk of the court at which an indictment is to be tried, shall at all times, upon the application of the defendant, and without charge, issue as many blank subpœnas, subscribed by him as clerk, for witnesses within the Territory as may be required by the defendant.

SEC. 521. A subpœna authorized by the last four sections shall be substantially in the following form:

TERRITORY OF ARIZONA, TO A. B.: You are commanded to appear before C. D., a justice of the peace of township, in county (or as the case may be), at (naming the place), on (stating the day and hour), as a witness in a criminal action, prosecuted by the Territory of Arizona, against E. F. Given under my hand this day of , A. D. 18 . G. H., justice of the peace (or "J. B., attorney-general," or "by order of the court, L. M., clerk," as the case may be).

SEC. 522. If books, papers, or documents be required, a direction to the following effect shall be contained in the subpœna: And you are required also to bring with you the following (describing intelligibly the books, papers, or documents required).

SEC. 523. A peace officer must serve within his county, any subpœna delivered to him for service, either on the part of the Territory or of the defendant, and must make a written return of the service, subscribed by him, stating the time and place of service without delay.

SEC. 524. The service of a subpœna shall be by showing the original to the witness personally, informing him of the contents.

SEC. 525. When a person shall attend before a magistrate, grand jury, or court, as a witness on behalf of the Territory, upon a subpœna or by virtue of a recognizance, and it shall appear that he has come from any place out of the county, or that he is poor, the court, if the attendance of the witness be upon a trial, by an order upon its minutes, or in any other case the district judge, by an order subscribed by him, may direct the treasurer of the

county to pay the witness a reasonable sum to be specified in the order for his expenses.

SEC. 526. Upon the production of the order, or a certified copy thereof, the county treasurer shall pay the witness the sum specified therein out of the county treasury.

SEC. 527. Disobedience to a subpœna, or a refusal to be sworn, or to answer as a witness, may be punished by the court or magistrate as a contempt.

SEC. 528. Where a witness has entered into a recognizance to appear, as provided by law, upon his failure to do so his recognizance shall be forfeited in the same manner as recognizances of bail.

SEC. 529. A witness disobeying a subpœna issued on the part of the defendant shall also forfeit to the defendant the sum of one hundred dollars, which may be recovered in a civil action, unless good cause be shown for his non-attendance.

Testimony taken by Commission.

SEC. 530. When a defendant has been held to answer a charge for a public offence, he may, either before or after an indictment, have witnesses examined on his behalf, as prescribed in this chapter, and not otherwise.

SEC. 531. When a material witness for the defendant is about to leave the Territory, or is so sick or infirm as to afford reasonable grounds for apprehending that he will be unable to attend the trial, the defendant may apply for an order that the witness be examined conditionally on a commission.

SEC. 532. A commission is a process issued under the seal of the court and the signature of the clerk, directed to some person designated as commissioner, authorizing him to examine the witness upon oath, on interrogations annexed thereto, to take and certify the deposition of the witness, and to return it according to the directions given in the commission.

SEC. 533. The commissioner shall either be a district judge, probate judge, district clerk, or notary public of the county to which the commission is issued.

SEC. 534. The application must be made upon affidavit, showing: First, the nature of the offence charged. Second, the state of the proceedings in the action. Third, the name of the witness, and that his testimony is material to the defence of the action. Fourth, that the witness is about to leave the Territory, or is so sick or infirm as to afford reasonable grounds for apprehending that he will not be able to attend the trial.

SEC. 535. The application may be made to the district court during the term, or to the judge in vacation, and must be upon three days' notice to the attorney-general.

SEC. 536. If the court or judge to whom the application is made be

satisfied of the truth of the facts stated, and that the examination of the witness is necessary to the attainment of justice, an order shall be made that a commission be issued to take his testimony.

SEC. 537. If the application for a commission be granted, the court or judge may insert in the order therefor a direction that the trial of the indictment be stayed for a specified time, reasonably sufficient for the execution and return of the commission.

SEC. 538. When the commission is ordered the defendant must serve upon the attorney-general, without delay, a copy of the interrogatories to be annexed thereto, with two days' notice of the time at which they will be presented to the court or judge.

SEC. 539. The attorney-general may in like manner serve upon the defendant or his counsel cross-interrogatories, to be annexed to the commission with the like notice.

SEC. 540. In the interrogatories either party may insert any questions pertinent to the issue.

SEC. 541. When the interrogatories and cross-interrogatories are presented to the court or judge, according to the notice given, the court or judge shall modify the questions so as to conform them to the rules of evidence, and shall endorse upon them his allowance and annex them to the commission.

SEC. 542. Unless the parties otherwise consent by an endorsement on the commission, the court or judge shall endorse thereon a direction as to the manner in which it shall be returned, and may in his discretion direct that it be returned by mail, or otherwise, addressed to the clerk of the court in which the action is pending, designating his name and the place where his office is kept.

SEC. 543. The commissioner, unless otherwise specially directed, may execute the commission as follows: First, he shall publicly administer an oath to the witness that his answers given to the interrogatories shall be the truth, the whole truth, and nothing but the truth. Second, he shall cause the examination of the witness to be reduced to writing. Third, he shall write the answers of the witness as near as possible in the language he gives them, and shall read to him each answer as it is taken down, and correct or add to it until it is made conformable to what he declares is the truth. Fourth, if the witness decline answering a question, that fact, with the reason for which he declines answering it, as he gives it, must be stated. Fifth, if any papers or documents are produced before him and proved by the witness, they shall be annexed to his deposition and be subscribed by the witness, and certified by the commissioner. Sixth, the commissioner shall subscribe his name to each sheet of the deposition, and annex the deposition with the papers and documents proved by the witness to the commission, and must close up, seal, and address the same as directed on the commission. Seventh, if there be a direction on the commission to return it by mail, the commissioner shall immediately deposit it in the nearest post-office. If any other direction be made by the written consent of the parties or by the court or judge on the commission as to its return, he must comply with the direction.

SEC. 544. A copy of the last section must be annexed to the commission.

SEC. 545. If the commission and return be delivered by the commissioner to an agent, he must deliver the same to the clerk to whom it is directed, or to the judge of the court in which the indictment is pending, by whom it may be received and opened upon the agent making affidavit that he received it from the hand of the commissioner, and that it has not been opened or altered since he received it.

SEC. 546. If the agent be dead, or from sickness or other casualty unable personally to deliver the commission and return as prescribed in the last section, it may be received by the clerk or judge from any other person, upon his making an affidavit that he received it from the agent; that the agent is dead, or from sickness or other casualty unable to deliver it; that it has not been opened or altered since the person making the affidavit received it; and that he believes it has not been opened or altered since it came from the hand of the commissioner.

SEC. 547. The clerk or judge receiving and opening the commission and return must immediately file it, with the affidavit mentioned in the last two sections, in the office of the clerk of the court in which the indictment is pending.

SEC. 548. If the commission and return be transmitted by mail, the clerk to whom it is addressed must receive it from the post-office, and open and file it in his office, where it shall remain unless otherwise directed.

SEC. 549. The commission and return shall be at all times open to the inspection of the parties, who shall be furnished by the clerk with copies of the same, or of such part thereof as they may require, on the payment of his fees.

SEC. 550. The depositions taken under the commission may be read in evidence by either party on the trial, upon it being shown that the witness is unable to attend from any cause whatever; and the same objections may be taken to any questions in the interrogatories, or to any answer in the deposition, as if the witness had been examined orally in court.

Inquiry into the Insanity of the Defendant before trial or after Conviction.

SEC. 551. An act done by a person in a state of insanity cannot be punished as a public offence, nor can a person be tried, adjudged to punishment, or punished for a public offence while he is insane.

SEC. 552. When an indictment is called for trial, or upon conviction the defendant is brought up for judgment, if a doubt shall arise as to the sanity of the defendant, the court shall order the question to be submitted to the regular jury, or may order a jury to be summoned, to inquire into the fact.

SEC. 553. The trial of the indictment, or the pronouncing of the judgment, as the case may be, shall be suspended until the question of insanity shall be determined by the verdict of the jury.

SEC. 554. The trial of the question of insanity shall proceed in the fol-

lowing order:—1st. The counsel for the defendant shall open the case and offer evidence in support of the allegation of insanity. 2d. The counsel for the Territory shall open their case and offer evidence in support thereof. 3d. The parties may then respectively offer rebutting testimony only unless the court, for good reason in furtherance of justice, permit them to offer evidence upon their original cause. 4th. When the evidence is concluded, unless the case is submitted to the jury, on either or both sides, without argument, the counsel for the Territory must commence, and the defendant or his counsel may conclude the argument to the jury. 5th. If the indictment be for an offence punishable with death, two counsel on each side may argue the cause to the jury, in which case they must do so alternately. In other cases the argument may be restricted to one counsel on each side. 6th. The court shall then charge the jury, if requested by either party.

SEC. 555. The provisions of law in respect to the charge of the court to the jury upon the trial of an indictment, shall apply to the question of insanity.

SEC. 556. If the jury find that the defendant is sane, the trial of the indictment shall proceed, or judgment may be pronounced, as the case may be.

SEC. 557. If the jury find that the defendant is insane, the trial or judgment shall be suspended till he becomes sane, and the court, if it deems his discharge dangerous to the public peace or safety, may order that he be in the meantime committed by the sheriff to the custody of some proper person, and that upon his becoming sane he be re-delivered by such person to the sheriff.

SEC. 558. The commitment of the defendant, as mentioned in the last section, shall exonerate any bail he may have given, or shall entitle any person authorized to receive the property of the defendant to a return of any money he may have deposited instead of bail.

SEC. 559. If the defendant be received by the person so appointed, he must be detained by him until he becomes sane. When he becomes sane, such person shall give notice to the sheriff and attorney-general of that fact. The sheriff shall thereupon, without delay, take the defendant from the custody of such person and place him in proper custody until he be brought to trial or judgment as the case may be, or be otherwise legally discharged.

SEC. 560. The expenses of placing the defendant in the custody of such proper person, of keeping and bringing him back, shall in the first instance be chargeable to the county in which the indictment was found; but the county may recover them from the estate of the defendant, if he have any, or from any relative, village, city, or county, bound to provide for and maintain him elsewhere.

Dismissal of the Action, before or after Indictment, for want of Prosecution or otherwise.

SEC. 561. When a person has been held to answer for a public offence, if an indictment be not found against him at the next term of the court at which he is held to answer, the court shall order the prosecution to be dismissed, unless good cause to the contrary be shown.

SEC. 562. If a defendant, indicted for a public offence, whose trial has not been postponed upon his application, be not brought to trial at the next term of the court at which the indictment is triable, after the same is found, the court shall order the indictment to be dismissed, unless good cause to the contrary be shown.

SEC. 563. If the defendant be not indicted or tried, as provided in the last two sections, and sufficient reason therefor be shown, the court may order the action to be continued from term to term, and in the meantime may discharge the defendant from custody on his own recognizance of bail for his appearance to answer the charge at the time to which the action is continued.

SEC. 564. If the court direct the action to be dismissed, the defendant shall, if in custody, be discharged therefrom, or if admitted to bail, his bail shall be exonerated, or money deposited instead of bail shall be refunded to him.

SEC. 565. The court may, either of its own motion or upon the application of the attorney-general, and in furtherance of justice, order any action or indictment to be dismissed; but in such case the reasons of the dismissal shall be set forth in the order, which must be entered on the minutes.

SEC. 566. Neither the attorney-general nor the attorney prosecuting for the Territory shall hereafter discontinue or abandon a prosecution for a public offence, except as provided in the last section.

SEC. 567. An order for the dismissal of the action, as provided in this chapter, shall be a bar to any other prosecution for the same offence, if it be a misdemeanor; but it shall not be a bar if the offence be a felony.

Entitling Affidavits.

SEC. 568. It shall not be necessary to entitle an affidavit or deposition in the action, whether taken before or after indictment, or upon an appeal; but if made without a title, or with an erroneous title, it shall be as valid and effectual for every purpose as if it were duly entitled, if it intelligibly refer to the proceeding, indictment, or appeal in which it is made.

Errors and Mistakes in Pleadings and other Proceedings.

SEC. 569. Neither a departure from the form or mode prescribed by this chapter in respect to any pleadings or proceedings, nor an error or mistake therein, shall render the same invalid, unless it have actually prejudiced the defendant, or tended to his prejudice, in respect to a substantial right.

Disposal of Property stolen or embezzled.

SEC. 570. When property alleged to have been stolen or embezzled shall come into the custody of a peace officer, he shall hold the same subject to the order of the magistrate authorized by the next section to direct the disposal thereof.

SEC. 571. On satisfactory proof of the title of the owner of the property, the magistrate to whom the information is laid, or who shall examine the charge against the person accused of stealing or embezzling the property, may order it to be delivered to the owner, on his paying the reasonable and necessary expenses incurred in its preservation, to be certified by the magistrate. The order shall entitle the owner to demand and receive the property.

SEC. 572. If the property stolen or embezzled come into the custody of the magistrate, it shall be delivered to the owner on satisfactory proof of his title, and on his paying the necessary expenses incurred in its preservation, to be certified by the magistrate.

SEC. 573. If the property stolen or embezzled have not been delivered to the owner, the court before which a conviction is held for stealing or embezzling may, on proof of his title, order it to be restored to the owner.

SEC. 574. If the property stolen or embezzled be not claimed by the owner before the expiration of six months from the conviction of a person for stealing or embezzling it, the magistrate or other officer having it in custody shall, on the payment of the necessary expenses incurred in its preservation, deliver it to the county treasurer, by whom it shall be sold, and the proceeds paid into the county treasury.

SEC. 575. When money or such other property is taken from a defendant arrested upon a charge of a public offence, the officer taking it shall at the time give duplicate receipts therefor, specifying particularly the amount of money and the kind of property taken; one of which receipts he shall deliver to the defendant, and the other of which he shall forthwith file with the clerk of the court, to which the depositions and statement must be sent, as provided by section one hundred and fifty-five.

Proceedings in Justices', Mayors', and Recorders' Courts.

SEC. 576. The following proceedings shall be applicable to criminal proceedings in all justices', mayors', and recorders' courts', now or hereafter established, in which by law they severally have authority and jurisdiction to proceed and determine, unless otherwise provided for by law.

SEC. 577. All proceedings and actions before a justice's, recorder's, or mayor's court for a public offence of which said courts have jurisdiction, shall be commenced by complaint setting forth the offence charged, with such particulars of time, place, person, and property, as to enable the defendant to understand distinctly the character of the offence complained of, and to answer the complaint.

SEC. 578. When the complaint is laid before the justice, mayor, or recorder, of the commission of a public offence of which the courts held by them have jurisdiction, he must examine on oath the complainant or prosecutor, and any witness he may produce, and take their depositions in writing, and cause them to be subscribed by the parties making them.

SEC. 579. If the justice, mayor, or recorder, as the case may be, be satis-

fied therefrom that the offence complained of has been committed, he shall issue a warrant of arrest, which shall be substantially in the following form:

"COUNTY OF , TERRITORY OF ARIZONA.

"*To any sheriff, constable, marshal or policeman in this Territory.*

"Complaint upon oath having been this day made before me (justice of the peace, mayor, or recorder, as the case may be) by C. D., that the offence of (designating it generally), has been committed, and accusing E. F. thereof, you are therefore commanded forthwith to arrest the above-named E. F. and bring him before me forthwith at (naming the place).

"Witness my hand and seal at , this day of , A. D.

"A. B."

SEC. 580. On being arrested, the defendant may plead to the complaint, or he may answer or deny the same. Such plea, answer, or denial may be oral or in writing, and immediately thereafter the case shall be tried, unless for good cause shown an adjournment shall be granted. If an adjournment be granted, the defendant may be held to bail.

SEC. 581. The defendant must in all cases be personally present before the trial shall proceed.

SEC. 582. A docket shall be kept by the justice, mayor, or recorder, or in the recorder's court by the clerk of the court, if there be one, in which he shall enter each action, and the minutes of the proceedings of the court therein.

SEC. 583. The defendant shall be entitled, if demanded by him, to a jury trial. The formation of the juries is provided for by special statute.

SEC. 584. The same challenges may be taken by either party to the panel of jurors, or to any individual juror, as may be taken on the trial of an indictment for a misdemeanor; and the challenge shall in all cases be tried by the court.

SEC. 585. The court shall administer to the jury the following oath or affirmation: "You do swear (or affirm, as the case may be), that you will well and truly try this issue between the Territory of Arizona and A. B., the defendant, and a true verdict give according to the evidence."

SEC. 586. After the jury are sworn, they must sit together and hear the proofs and allegations of the parties, which must be delivered in public, and in the presence of the defendant.

SEC. 587. The court shall decide all questions of law which may arise in the course of the trial; but shall give no charge with respect to matters of fact.

SEC. 588. After hearing the proofs and allegations, the jury may decide in court, or may retire for consideration. If they do not immediately agree, an officer must be sworn to the following effect: "You do swear that you will keep this jury together in some private and convenient place; that you will not permit any person to speak to them, nor speak to them

yourself, unless it be to ask them whether they have agreed upon a verdict; and that you will return them into court when [they] have so agreed."

SEC. 589. The verdict of the jury shall, in all cases, be general.

SEC. 590. When the jury have agreed upon their verdict they shall deliver it publicly to the court, who shall cause the same to be entered on the minutes.

SEC. 591. When several defendants are tried together, if the jury cannot agree upon a verdict as to all, they may render a verdict as to those in regard to whom they do agree, on which a judgment shall be entered accordingly, and the case as to the rest may be tried by another jury.

SEC. 592. The jury shall not be discharged after the cause is submitted to them, until they have agreed upon and rendered their verdict, unless for good cause the court sooner discharge them.

SEC. 593. If the jury be discharged, as provided in the last section, the court may proceed again to the trial, in the same manner as upon the first trial; and so on, until a verdict be rendered.

SEC. 594. When the defendant pleads guilty, or is convicted, either by the court or by a jury, the court shall render judgment thereon of fine and imprisonment, or both, as the case may require.

SEC. 595. A judgment that the defendant pay a fine, may also direct that he be imprisoned until the fine be paid or satisfied.

SEC. 596. When the defendant is acquitted, either by the court or by the jury, he shall be immediately discharged; and if the court certify in the minutes that the prosecution was malicious, or without probable cause, it may order the prosecutor to pay the costs of the action, or to give satisfactory security, by a written undertaking, with one or more sureties, to pay the same to the county within thirty days after the trial.

SEC. 597. If the prosecutor do not pay the costs, or give security therefor, as provided in the last section, the court may enter judgment against him for the amount thereof, which may be enforced in all respects in the same manner as a judgment rendered in a civil action.

SEC. 598. When a verdict is rendered it shall be immediately entered upon the minutes.

SEC. 599. After a plea or verdict of guilty, or after a verdict against the defendant, or a plea of a former conviction or acquittal, the court shall appoint a time for rendering judgment, which shall not be more than two days or less than two hours after the verdict is rendered, and shall hold the defendant to bail to appear for judgment, and in default of bail, he shall be committed.

SEC. 600. At any time before the judgment is entered, the defendant may move for a new trial, or in arrest of judgment.

SEC. 601. A new trial can be granted only in the following cases: 1st.

If the trial has been had in his absence. 2d. When the jury has received any evidence out of court. 3d. When the jury have separated without leave of the court, after retiring to deliberate upon their verdict, or been guilty of any misconduct tending to prevent a fair and due consideration of the case. 4th. When the verdict has been decided by lot, or by any means other than a fair expression of opinion on the part of all the jurors. 5th. When there has been error in the decision of the court, given on any question of law arising during the course of the trial. When the verdict is contrary to law and evidence; but not more than one new trial shall be granted for this cause alone.

SEC. 602. The motion in arrest of judgment may be founded on any substantial defect in the complaint, and the effect of an arrest of judgment is to place the defendant in the same situation in which he was before the trial was had.

SEC. 603. If the judgment be not arrested, or a new trial granted, judgment shall be pronounced at the time appointed, and entered in the minutes of the court.

SEC. 604. If judgment of acquittal be given, or judgment imposing a fine only, and the defendant be not detained for any other legal cause, he must be discharged as soon as the judgment is given.

SEC. 605. When a judgment of imprisonment is entered, a certified copy thereof shall be delivered to the sheriff, marshal, or other officer, which shall be a sufficient warrant for the execution of the same.

SEC. 606. When a judgment is entered imposing a fine, or ordering the defendant to be imprisoned until the fine shall be paid, he shall be held in custody during the time specified in the judgment, unless the fine be sooner paid.

SEC. 607. Upon the payment of the fine the officer shall immediately discharge the defendant, if he be not detained for any other legal cause, and apply the money to the payment of the expenses of the prosecution, and pay over the residue, if any, within ten days, to the county or city treasurer, according as the offence is prosecuted in a justice's, or in a mayor's or recorder's court.

SEC. 608. If a fine be imposed and paid before commitment, it shall be applied as prescribed in the preceding section.

SEC. 609. If a defendant be discharged on bail, or has deposited money instead thereof, and fails to appear according to his recognizance, the same shall be forfeited, or the money appropriated in like manner as in the district court.

SEC. 610. In case of failure to appear for judgment, the court shall issue a warrant for the arrest of the defendant, and shall enter judgment whenever the defendant appears or is brought before it.

Of Special Proceedings.

Of Search Warrants.

SEC. 611. A search warrant is an order in writing in the name of the Territory of Arizona, signed by a magistrate, directed to a peace-officer, commanding him to search for personal property, and bring it before the magistrate.

SEC. 612. It may be issued whenever property has been stolen or embezzled, in which case it may be taken on the warrant from any house or other place in which it is concealed, or from the possession of the person by whom it was stolen or embezzled, or of any other person in whose possession it may be.

SEC. 613. No search warrant shall be issued but upon probable cause, supported by affidavit, naming or describing the person, and particularly describing the property and place to be searched.

SEC. 614. The magistrate must, before issuing the warrant, examine on oath the complainant, and any witness he may produce, and take their depositions in writing, and cause them to be subscribed by the parties making them.

SEC. 615. The depositions must set forth the facts tending to establish the grounds of the application or probable cause for believing that they exist.

SEC. 616. If the magistrate be satisfied of the existence of the grounds of the application, or that there is probable cause to believe their existence, he shall issue a search warrant, signed by him with his name of office, to a peace-officer in his county, commanding him forthwith to search the person or place named for the property specified, and to bring it before the magistrate.

SEC. 617. The warrant shall be in substantially the following form:—

COUNTY OF , TERRITORY OF ARIZONA.

To any sheriff, constable, marshal, or policeman in the county of .

Proof by affidavit having been this day made before me (naming every person whose affidavit has been taken), that (stating the grounds of the application according to section six hundred and thirteen), or if the affidavit be not positive that there is probable cause for believing that (stating the ground of the application in the same manner) you are therefore commanded, in the daytime (or at any time of the day or night, as the case may be) to make immediate search on the person of C. D. (or in the house, situated describing it, or any other place to be searched, with reasonable particularity, as the case may be), for the following property (describing it with reasonable particularity), and if you find the same or any part thereof, to bring it forthwith before me, at (stating the place).

Given under my hand, and dated this day of , A.D. 18 .

E. F., *Justice of the peace* (or as the case may be).

SEC. 618. A search warrant may in all cases be served by any of the officers mentioned in its directions, but by no other person except in aid of the officer, on his requiring it, he being present, and acting in its execution.

SEC. 619. The officer may break open any outer or inner door or window of a house, or any part of a house, or anything therein, to execute the warrant, if after notice of his authority and purpose he be refused admittance.

SEC. 620. He may break open any outer or inner door or window of a house for the purpose of liberating a person who, having entered to aid him in the execution of the warrant, is detained therein, or when necessary for his own liberation.

SEC. 621. The magistrate must insert a direction in the warrant that it be served in the daytime, unless the affidavits be positive that the property is on the person, or in the place to be searched, in which case he may insert a direction that it be served at any time of the day or night.

SEC. 622. A search warrant must be executed and returned to the magistrate who issued it within five days after its date, and if in any other county, within thirty days; after the expiration of these times, respectively, the warrant shall, unless executed, be void.

SEC. 623. When the officer shall have taken any property under the warrant, he must give a receipt for the property taken (specifying it in detail), to the person from whom it was taken by him or in whose possession it was found; or in the absence of any person, he shall leave it in the place where he found the property.

SEC. 624. When the property is delivered to the magistrate he shall, if it was stolen or embezzled, dispose of it as provided in other cases of property stolen or embezzled.

SEC. 625. The officer shall forthwith return the warrant to the magistrate, and at the same time deliver to him a written inventory of the property taken; made publicly or in the presence of the person from whose possession it was taken, and of the applicant for the warrant, if they be present, verified by the affidavit of the officer at the foot of the inventory, and taken before the magistrate at the time to the following effect: "I, R. S., the officer by whom the annexed warrant was executed, do swear that the above inventory contains a true and detailed account of all the property taken by me on the warrant."

SEC. 626. The magistrate shall thereupon, if required, deliver a copy of the inventory to the person from whose possession the property was taken, and to the applicant for the warrant.

SEC. 627. If the grounds on which the warrant was issued be controverted, he must proceed to take testimony in relation thereto.

SEC. 628. The testimony given by each witness must be reduced to writing and certified by the magistrate.

SEC. 629. If it appear that the property taken is not the same as that described in the warrant, or that there is no probable cause for believing the existence of the grounds on which the warrant was issued, the magistrate shall cause it to be restored to the person from whom it was taken.

SEC. 630. The magistrate shall annex, together with the depositions, the search warrant and return, and the inventory, and return them to the next term of the court having power to inquire into the offences in respect to which the search warrant was issued, at or before its opening on the first day.

SEC. 631. Whoever shall maliciously and without probable cause, procure a search warrant to be issued and executed, shall be deemed guilty of a misdemeanor, and on conviction thereof, shall be fined in a sum not exceeding five thousand dollars, or imprisonment not more than six months.

SEC. 632. A peace officer who, in executing a search warrant, shall wilfully exceed his authority or exercise it with unnecessary severity, shall be deemed guilty of a misdemeanor and punished as in the last preceding section is provided.

SEC. 633. When a person charged with a felony is supposed by the magistrate before whom he is brought to have on his person a dangerous weapon or anything which may be used in evidence of the commission of the offence, the magistrate may direct him to be searched in his presence, and the weapon or other thing to be retained subject to his order, or to the order of the court in which the defendant may be tried.

Of Proceedings against Fugitives from Justice.

SEC. 634. A person charged in any State or Territory of the United States with treason, felony, or other crime, who shall flee from justice and be found in this Territory, shall, on the demand of the executive authority of the State or Territory from which he fled, be delivered up by the Governor of this Territory to be removed to the State having jurisdiction of the crime.

SEC. 635. A magistrate may issue a warrant for the apprehension of a person so charged who shall flee from justice and be found in this Territory.

SEC. 636. The proceedings for arrest and commitment of the person charged, shall be in all respects similar to those provided in this chapter for the arrest and commitment of a person charged with a public offence committed within this Territory, except that an exemplified copy of an indictment found, or other judicial proceeding had against him in the State or Territory in which he is charged to have committed the offence, may be received as evidence before the magistrate.

SEC. 637. If, from the examination, it appear that the person charged has committed treason, felony, or other crime at common law charged, the magistrate, by warrant reciting the accusation, shall commit him to the proper custody within his county, for a time to be specified in the warrant, which the magistrate may deem reasonable to enable the arrest of the fugi-

tive under the warrant of the executive of this Territory on the requisition of the executive authority of the State or Territory in which he committed the offence, unless he give bail as provided in the next section, or until he be legally discharged.

SEC. 638. The magistrate may admit the person arrested to bail by recognizance with sufficient securities, and in such sum as he may deem proper, for his appearance before him at a time specified in the recognizance, and for his surrender, to be arrested upon the warrant of the governor of this Territory.

SEC. 639. Immediately upon the arrest of the person charged, the magistrate shall give notice to the attorney-general of the name of the person, and the cause of the arrest.

SEC. 640. The said attorney shall immediately thereafter give notice to the executive authority of the State or Territory, or to the prosecuting attorney or presiding judge of the criminal court of the city or county within the State or Territory having jurisdiction of the offence, to the end that a demand may be made for the arrest and surrender of the person charged.

SEC. 641. The person arrested shall be discharged from custody or bail, unless, before the expiration of the time designated in the warrant or recognizance, he be arrested under the warrant of the governor of this Territory.

SEC. 642. The magistrate shall make return of his proceedings to the next district court of the county, which shall thereupon inquire into the cause of the arrest and detention of the person charged, and if he be in custody, or the time for his arrest have not elapsed, the court may discharge him from detention, or may order his recognizance of bail to be cancelled, or may continue his detention for a longer time, or may readmit him to bail, to appear and surrender himself within a time to be specified in the recognizance.

SEC. 643. When the governor of this Territory, in the exercise of the authority conferred by section two, article four, of the constitution of the United States, or by the laws of this Territory, shall demand from the executive authority of any State or Territory of the United States, or of any foreign government, the surrender to the authorities of this Territory of a fugitive from justice, the accounts of the persons employed by him for that purpose shall be audited by the board of Territorial auditors and paid out of the Territorial treasury.

Of Provisions applicable to Criminal Proceedings generally.

Compromising certain Public Offences, by leave of the Court.

SEC. 644. When a defendant is held to answer on a charge of misdemeanor, for which the person injured by the act constituting the offence has a remedy by a civil action, the offence may be compromised as provided in the next section, except when it is committed: First, by or upon any officer of justice, while in the execution of the duties of his office. Second, riotously. Third, with an intent to commit a felony.

SEC. 645. If the party injured appear before the court to which the depo-

sitions are required to be returned at any time before trial, and acknowledge in writing that he has received satisfaction for the injury, the court may, in its discretion, on payment of the costs incurred, order all proceedings to be stayed upon the prosecution, and the defendant to be discharged therefrom; but in such case the reasons for the order must be set forth therein and entered on the minutes.

SEC. 646. The order authorized by the last section shall be a bar to another prosecution for the same offence.

SEC. 647. No public offence shall be compromised, nor shall any proceeding for the prosecution or punishment thereof upon a compromise be stayed, except as provided in this chapter.

Of Fines and Forfeitures.

SEC. 648. All fines and forfeitures collected in any court of this Territory shall be applied to the payment of the costs of the case in which the fine is imposed, or the forfeiture incurred, and after such costs are paid, the residue shall be paid to the county treasurer of the county in which the court is held.

SEC. 649. If any clerk, justice of the peace, sheriff, constable, or other officer, who may receive any fine or forfeiture, shall refuse or neglect to pay over the same according to law, and within thirty days after the receipt thereof, he shall be liable upon his official bond for the amount thereof, with fifty per cent. damages and interest, to be recovered in like manner as for failing to pay over money received on execution, and shall be deemed guilty of a misdemeanor; and, on conviction, may be fined in any sum not exceeding five hundred dollars, or by imprisonment not exceeding three months.

MISCELLANEOUS PROVISIONS.

SEC. 650. The "term" oath, where used in this chapter, shall be deemed to include an affirmation.

SEC. 651. When a signature of a person is required by this chapter, the mark of the person, if he cannot write, shall be deemed sufficient, the name of the person making the mark being written near it, and the mark being witnessed by a person who writes his own name as a witness.

SEC. 652. When it is necessary for any purpose to have a person who is in prison in any part of the Territory brought before a court of criminal jurisdiction, an order for that purpose may be made by the court, and the order shall be executed by the sheriff of the county where it is made.

SEC. 653. Process issued by a court or magistrate shall be executed according to its term.

SEC. 654. The term "magistrate," when used in this chapter, signifies any of the officers mentioned in section eighty-four.

SEC. 655. The term "peace officer," when used in this chapter, signifies any one of the officers mentioned in section ninety-one.

Of the Costs in Criminal Actions and Proceedings.

SEC. 656. The only costs or fees allowed in a criminal action or proceeding shall be such as are prescribed by this chapter.

SEC. 657. The magistrate, if he be a justice of the peace, or a mayor, or a city recorder, may receive for all the proceedings before him, to and including his decision upon the question of discharging the defendant or holding him to answer, three dollars; for taking bail after a commitment by another magistrate, one dollar.

SEC. 658. The clerk may receive on the trial of an issue, where the charge is felony, five dollars; on the trial of an issue where the charge is a misdemeanor, two dollars; entering judgment, one dollar. He shall receive no other fee for any service whatever in a criminal action or proceeding, except for copies of papers at the rate of twenty cents for every hundred words.

SEC. 659. A peace officer may receive for making an arrest, two dollars, together with twenty cents for every mile necessarily travelled by him in rendering such service, and in taking a defendant before a court or magistrate, or conveying him to prison; for serving a subpœna, fifty cents, together with twenty cents for every mile necessarily travelled by him in rendering such service. The district court may allow such further compensation for the service of process, and for other services in criminal cases, as it may think reasonable.

SEC. 660. The sheriff may also receive for summoning a panel of twenty-four jurors, twenty dollars; for summoning a panel of thirty-six jurors, thirty dollars; for summoning a panel of twelve jurors, ten dollars; for executing a sentence of death, fifty dollars. Each juror shall receive for each day's attendance, two dollars, to be paid on the certificate of the clerk which shall be issued during the term.

SEC. 661. The attorney-general shall receive on each conviction for felony, when the punishment is death, fifty dollars; on each conviction for other felony, twenty-five dollars; on each conviction for a misdemeanor, fifteen dollars; for collecting money on a forfeited recognizance, five per cent. on the amount collected, and such other fees as may be provided by law.

SEC. 662. The fees allowed to justices of the peace, and other officers having the jurisdiction and authority of justices of the peace, clerks, peace officers, and attorney-generals, shall, when the defendant is convicted, be considered and recovered against him as costs in the suit, and be collected in like manner as costs in civil cases.

SEC. 663. The fees allowed a sheriff for summoning jurors, jurors' fees, and the fees allowed magistrates, peace officers, and clerks, in cases where the defendant is acquitted, or where, being convicted, he is unable to pay the costs, shall be county charges, and shall be audited and paid in like manner as other charges against the county.

CHAPTER XII.

Of Jails and Prisons, and the Confinement of Persons therein.

SEC. 1. Until a Territorial prison is erected, the jail of any county in this Territory shall for all purposes be considered and used for a Territorial prison; and any person convicted and sentenced to be imprisoned in the Territorial prison, may be confined in the jail of any county, to be designated by the court pronouncing such sentence, for the time he is so sentenced to be confined.

SEC. 2. The sheriff of each county shall have the charge of the prisoners sentenced to the Territorial prison and confined in the county jail, and it shall be the duty of such sheriff to keep them separate from all other prisoners confined in such jail, and to provide them suitable bedding, clothing, board, and medical attendance. He shall have power to enforce such discipline, rules, and regulations in regard to such persons, as shall be prescribed by lawful authority.

SEC. 3. All expenses incurred in removing such prisoner to any such jail, and keeping and providing for him therein, shall be proper charges against the Territory, and shall be audited and paid by the board of Territorial auditors.

SEC. 4. The board of Territorial auditors may, from time to time, make such rules and regulations as they may think proper, consistent with the laws of this Territory, relative to the care, management, discipline, and employment of persons sentenced to the Territorial prison, and may, in their discretion, cause such person to be employed in any mechanical trade, or placed at hard labor upon any public or private work, under such rules and regulations as they may prescribe. The earnings of such prisoner shall be applied towards the expenses incurred on account of his imprisonment.

SEC. 5. All sheriffs, or other persons having the care, custody, or management of any such prisoner, shall observe, keep, and enforce any regulations provided for in the preceding section, and for any wilful violation thereof shall be deemed guilty of a misdemeanor, and upon conviction may be sentenced to pay a fine not exceeding one thousand dollars, and imprisoned in the county jail not exceeding one year.

SEC. 6. Any person detained for examination or trial upon any criminal charge, or arrested upon any such charge, and committed to or in the custody of any sheriff, shall, if bail be not given agreeably to law, be detained and kept in the jail of the proper county, and any constable or other officer, having charge of any such person as aforesaid, may detain and keep him in any such jail, until required to be taken therefrom for the purposes of such examination or trial.

SEC. 7. Any person convicted of a misdemeanor, and sentenced to be confined in any jail, shall be closely confined therein, and not suffered to go at large during the time for which he shall be so sentenced to confinement, unless legally discharged therefrom; and the sheriff, or other officer or person having the charge of such jail, or the care and custody of such person, who shall knowingly permit him to escape or go at large, shall be adjudged

guilty of a misdemeanor, and upon conviction thereof shall be subject to such fine and imprisonment in the county jail as the court may impose, not exceeding the sentence under which the person was imprisoned who shall have so escaped, or been suffered to go at large.

SEC. 8. Any sheriff, other officer or person, having the custody of any person charged with crime for the purposes of examination or trial, may, with the consent of the commanding or other officer in charge, commit and detain him in any military fort, station, or post, for the time and purposes, and under the provisions contained in section six of this chapter.

SEC. 9. If, upon the examination of any person charged with any crime amounting to a felony, the examining magistrate shall decide to hold such person for trial on any such charge, and it shall become necessary from any cause that he be committed to await such trial, such magistrate may commit such person to the jail of any county, to be by him designated for safe keeping, *provided* there be no jail in the county in which he is so examined, or for any reason such jail shall be deemed unsafe or unsuitable by such magistrate.

CHAPTER XIII.

Executive Department of the Governor.

SEC. 1. In addition to the powers conferred upon the governor of this Territory by the constitution and laws of the United States, the supreme executive power of the Territory is hereby vested in such governor.

SEC. 2. He shall be commander-in-chief of the military and naval forces of the Territory, and may call out such forces to execute the laws, to suppress insurrections or riots; to repel invasions, or to prevent attacks from, or to attack or punish, any hostile tribe or tribes of Indians.

SEC. 3. He shall transact all necessary business with Territorial officers, and may require information in writing from any such officer relating to the duties of their respective offices.

SEC. 4. He shall take care that the laws be faithfully executed.

SEC. 5. He may convene the Legislature by proclamation on extraordinary occasions.

SEC. 6. He shall give to the Legislature, at the commencement of each term, information by message of the condition of the Territory, and recommend to them such measures as he shall deem expedient.

SEC. 7. He may convene the Legislature at some other place, when the seat of government becomes dangerous from disease or a common enemy.

SEC. 8. He may grant reprieves, commutations, and pardons for all offences against the laws of this Territory, upon such conditions and with

such restrictions and limitations as he may deem proper, subject to such regulations as may be provided by law relative to the manner of applying for pardons. He shall communicate to the Legislature, at each session, information of each case of reprieve, commutation, or pardon granted, and the reasons therefor.

SEC. 9. In case any person charged with having committed a crime shall be at large, or being arrested or imprisoned therefor, shall have escaped, the governor is hereby authorized, in his discretion, to offer a reward for the apprehension, or apprehension and conviction of such person, not exceeding the sum of one thousand dollars in any one case, which shall be audited by the board of Territorial auditors to the person or persons equitably entitled to receive the same, and in such proportions as they shall deem just—and, when so audited, shall be paid out of the Territorial treasury.

SEC. 10. The governor of this Territory may, in cases authorized by the constitution and laws of the United States, appoint agents to demand of the executive authority of any other State or Territory, or from the executive authority of any foreign government, any fugitive from justice, or person charged with treason; and the accounts of the agents appointed for that purpose shall, unless otherwise directed by the governor, be audited by the board of Territorial auditors and paid out of the Territorial treasury.

SEC. 11. In cases provided for by the second article of the treaty between the United States and the Republic of Mexico for the extradition of criminals (concluded at Mexico on the eleventh day of December, one thousand eight hundred and sixty-one, and proclaimed by the President of the United States on the twentieth day of June, one thousand eight hundred and sixty-two), in addition to the power of the governor for that purpose, any justice of the supreme court of this Territory may make such requisition upon the executive or other principal authority of any state or province of the Mexican republic adjoining the boundaries of this Territory, agreeably to the stipulations of said article: Provided, that if such requisitions be made by any such justice of the supreme court, the same may be under the seal of the district court which, by law, he is assigned to hold.

SEC. 12. The governor is hereby empowered to fill by appointment, any vacancy that may happen in any Territorial or county office for the unexpired term of such office, when no other provision of law is made for that purpose. He may also remove any such officer for any neglect of duty or official misconduct, when in his opinion the public good requires such removal. Such removal shall be upon notice of the grounds upon which such removal is sought to be made, and a hearing thereon, at such time, and in such manner and form, as the governor may prescribe. He may also remove any such officer for utter incompetency to discharge the duties of his office.

SEC. 13. Whenever a demand shall be made upon the governor of this Territory, by the governor of any other State or Territory, in any case authorized by the constitution and laws of the United States, for the delivery over of any person charged in such State or Territory with treason, felony, or any other crime, the attorney-general when required by the governor, shall forthwith investigate the grounds of demand, and report to

the governor all material facts which may come to his knowledge, as to the situation and circumstances of the person so demanded, and especially whether he is held in custody, or is under recognizance to answer for any offence against the laws of this Territory, or of the United States, or by virtue of any civil process, and also whether such demand is made conformably to law, so that such person ought to be delivered up.

SEC. 14. If the governor shall be satisfied that the demand is conformable to law, and ought to be complied with, he shall issue his warrant, under the seal of the Territory, authorizing the agents who make such demand, either forthwith, or at such time as shall be designated in the warrant, to take and transport such person to the line of this Territory, at the expense of such agents, and shall also by such warrant require the civil officers within this Territory to afford all needful assistance in the execution thereof.

SEC. 15. Whenever any person shall be found within this Territory, charged with any offence committed in any other State or Territory, and liable by the constitution and laws of the United States to be delivered over upon the demand of the governor of such other State or Territory, any court or magistrate authorized to issue warrants in criminal cases, may, upon complaint on oath, setting forth the offence, and such other matters as are necessary to bring the case within the provisions of law, issue a warrant to bring the person so charged before the same or some other court or magistrate, within this Territory, to answer to such complaint as in other cases.

SEC. 16. If, upon the examination of the person charged, it shall appear to the court or magistrate that there is reasonable cause to believe that the complaint is true, and that such person may be lawfully demanded of the governor, he shall, if not charged with a capital crime, or with murder in the first degree, be required to recognize, with sufficient sureties, in a reasonable sum, to appear before such court or magistrate at a future day, allowing a reasonable time to obtain the warrant of the governor, and to abide the order of such court or magistrate in the premises.

SEC. 17. If such person shall not recognize, or if he shall be charged with a capital crime, or with the crime of murder in the first degree, he shall be committed to prison, and there detained until such day, in like manner as if the offence charged had been committed within this Territory; and, if the person so recognizing shall fail to appear according to the condition of his recognizance, he shall be defaulted, and the same proceedings shall be had as in the case of other recognizances entered into before such court or magistrate.

SEC. 18. If the person so recognized or committed shall appear before the court or magistrate upon the day ordered, he shall be discharged, unless he shall be demanded by some person authorized by the warrant of the governor to receive him, or unless the court or magistrate shall see cause to commit him, or to require him to recognize anew for his appearance at some other day; and if, when ordered, he shall not so recognize, he shall be committed and detained as before: *Provided*, That whether the person so charged shall be recognized, committed, or discharged, any person authorized by the warrant of the governor, may, at all times, take him into custody, and the same shall be a discharge of the recognizance, if any, and shall not be deemed an escape.

SEC. 19. The complainant in any such case shall be answerable for all the actual costs and charges, and for the support in prison of any person so committed, to be paid weekly, or otherwise, as may be ordered by the court or magistrate; and, if the charge for his support in prison shall not be so paid, the jailor may, on the failure of the complainant, discharge such person from his imprisonment.

SEC. 20. In all cases in which the governor is authorized by the laws to grant pardons, he may grant a pardon upon such conditions, and with such restrictions, and under such limitations as he may think proper, and he may issue his warrant to all proper officers to carry into effect such conditional pardon; which warrant shall be obeyed and executed, instead of the sentence, if any, which was originally awarded.

SEC. 21. Whenever any convict is pardoned by the governor, or his punishment is commuted, the officer to whom the warrant for that purpose is issued, after executing the same, shall make return thereof, under his hand, with his doings thereon, to the secretary of the Territory, as soon as may be, and he shall also file in the clerk's office of the court in which the offender was convicted, a copy of the warrant and return, certified by him, a brief abstract of which the clerk shall subjoin to the record of the conviction and sentence.

SEC. 22. All official acts of the governor, his approval of the laws excepted, shall be authenticated by the great seal of the Territory, which shall be kept by the secretary thereof.

SEC. 23. All commissions issued to persons holding office under the provisions of the laws of this Territory, shall be in the name, and by the authority of the Territory of Arizona, sealed with the great seal of the Territory, signed by the governor, and countersigned by the secretary of the Territory.

SEC. 24. The governor is hereby authorized on behalf of the Territory, and for its use and benefit, to accept any grants of land heretofore or hereafter made by the Congress of the United States to this Territory, upon the conditions contained in such grant. He shall cause the same to be located agreeably to such grant, and secure patents and other conveyances therefor, in behalf of the Territory. The lands granted to the Territory by act of congress, entitled—"An Act donating Public Lands to the several States and Territories which may provide Colleges for the benefit of Agriculture and the Mechanic Arts," approved July 2, 1862, and the acts supplementary thereto, are hereby accepted subject to the conditions of said grant.

CHAPTER XIV.

Of the Legislature.

SEC. 1. Each house of the Legislature shall choose its own officers, determine the rules of its proceedings, and judge of the qualifications, elections,

and returns of its members; and may, with the concurrence of two-thirds of all the members elected, expel a member. No member shall be expelled a second time for the same cause, nor for any cause known to his constituents antecedent to his election. The reason for such expulsion shall be entered upon the journal, with the names of the members voting on the question.

SEC. 2. Each house shall keep a journal of its proceedings, and publish the same, except such parts as may require secresy. The yeas and nays of the members of either house, on any question, shall be entered on the journal at the request of one-fifth of the members elected. Any member of either house may dissent from and protest against any act, proceeding, or resolution which he may deem injurious to any person or the public, and have the reason of his dissent entered on the journal.

SEC. 3. In all elections by either house, or in joint Convention, the votes shall be given *viva voce*. All votes on nominations to the Council shall be taken by yeas and nays, and published with the journal of its proceedings.

SEC. 4. The doors of each house shall be open, unless the public welfare require secresy. Neither house shall, without the consent of the other, adjourn for more than three days, nor to any other place than where the Legislature may then be in session.

SEC. 5. Bills may originate in either house of the Legislature.

SEC. 6. Every bill and concurrent resolution, except of adjournment, passed by the Legislature, shall be presented to the Governor before it becomes a law. If he approve, he shall sign it; but if not, he shall return it with his objections to the house in which it originated, which shall enter the objections at large upon their journal.

SEC. 7. A majority of the members elected to each house shall constitute a quorum for the transaction of business; but a lesser number may adjourn from time to time and compel the attendance of absent members.

SEC. 8. Every bill and joint resolution shall be read three times in each house before the final passage thereof. No bill or joint resolution shall become a law, without the concurrence of a majority of all the members present, and constituting a quorum of each house. On the final passage of all bills, and all joint resolutions having the effect of law, the vote shall be by yeas and nays, and entered on the journal.

SEC. 9. Members of the Council and of the House of Representatives shall in all cases, except treason, felony, or breach of the peace, be privileged from arrest. They shall not be subject to any civil process during the session of the Legislature, or for fifteen days next before the commencement and after the termination of each session. They shall not be questioned in any other place for any speech in either house.

SEC. 10. No officer of the Council or House of Representatives, while in actual attendance upon the duties of his office, shall be liable to arrest on civil process.

SEC. 11. Each House may punish as a contempt, and by imprisonment, a

breach of its privileges, or the privileges of its members, but only for one or more of the following offences, to wit:

1. The offence of arresting a member or officer of the House, or procuring such member or officer to be arrested, in violation of his privilege from arrest;

2. That of disorderly conduct in the immediate view of the House, and directly tending to interrupt its proceedings;

3. That of refusing to attend, or be examined as a witness, either before the House, or a committee, or before any person authorized by the House, or by a committee, to take testimony in Legislative proceedings;

4. That of giving or offering a bribe to a member, or of attempting by menace, or other corrupt means or device, directly or indirectly to control or influence a member in giving his vote, or to prevent his giving the same; but the term of imprisonment which such House may impose for any contempt specified in this section, shall not extend beyond the same session of the Legislature.

SEC. 12. Every person who shall be guilty of any contempt specified in the preceding section, shall also be deemed guilty of a misdemeanor, and on conviction thereof shall be punished by imprisonment in the Territorial prison not exceeding five years, or by imprisonment in the county jail not exceeding one year, or by fine not exceeding one thousand dollars, or by both such fine and imprisonment in the county jail, in the discretion of the court.

SEC. 13. The oath of office of any member or officer of either House of the Legislature may be taken and subscribed before any Justice of the Supreme Court, the Governor, Secretary of the Territory, or the presiding officer of either House.

SEC. 14. Each House, at the commencement of its annual session, shall elect from its own members a presiding officer, who shall preside at any session during the year, if present; and when absent, each House shall appoint a member temporarily to preside, who for the time shall be vested with all the powers of the presiding officer. The presiding officer of the Council shall be known as the President of the Council, and the presiding officer of the House as the Speaker of the House. Such presiding officer shall sign all bills and joint resolutions, after being enrolled, before the same are presented to the governor for his approval.

Of the Appointment and Election of Members.

SEC. 15. Members of the Legislature shall be elected by counties; and at the general election to be holden on the first Wednesday of September, one thousand eight hundred and sixty-five, and annually thereafter, and until an enumeration of the inhabitants be taken, and a different apportionment be made agreeably to law: the county of Pima shall elect four members of the Council and nine members of the House of Representatives; the county of Yuma shall elect one member of the Council and three members of the House of Representatives; the county of Mohaves shall elect one member of the Council and two members of the House of Representatives; and the county of Yavapai shall elect three members of the Council and four members of the House of Representatives. Provided, that mem-

bers of the Legislative Council shall, in all cases, be elected for two years.

SEC. 16. The annual meeting of the Legislature shall be on the first Wednesday of December, at such point as the governor shall designate for that purpose in this Territory.

SEC. 17. The county assessor of each county, in the month of April in each year, and at the time of assessing the taxable property of the county, shall take a census or enumeration of the inhabitants thereof, except Indians, negroes, and soldiers in the military service of the United States, which census shall show,

1. The name of the head of each family and single person over twenty-one years of age, and not residing with any family;
3. The number of persons over ten and under twenty-one years of age, residing in any family, or separately as a family;
3. The number under ten years of age.

The assessor shall return such census or enumeration, with his assessment, to the county recorder, whose duty it shall be to file the same in his office, and transmit a certified copy thereof to the governor, on or before the first day of June in each year.

SEC. 18. Upon such census or enumeration being returned to the governor, as provided in the preceding section, he shall, on or before the second Monday of July in each year, determine and apportion the number of members of each branch of the Legislature to which each county is entitled under such census or enumeration and thereafter; and until another appointment shall be made, each county shall elect the number of members so appointed to such county.

SEC. 19. Upon such determination and apportionment being made by the governor as is provided in the preceding section, he shall issue his proclamation announcing such apportionment, and the basis of population upon which the same is made; and shall transmit to each sheriff, county recorder, and district judge a copy thereof.

SEC. 20. No Territorial treasurer, judge of probate, sheriff, or county recorder shall be eligible to a seat in either branch of the Legislature during his continuance in office.

CHAPTER XV.

Of the Secretary of the Territory.

SEC. 1. The Secretary of the Territory shall keep his office at the seat of government.

SEC. 2. He shall secure, and safely keep in his office, all original acts and joint resolutions of the Legislature, and cause the same to be substantially bound in suitable and convenient volumes.

SEC. 3. He shall prepare copies of all such laws and joint resolutions for publication, and deliver the same to the newspaper offices or persons authorized by law to receive them for that purpose, or to superintend their publication.

SEC. 4. He shall furnish certified copies of all laws, joint resolutions, records, documents and papers in his office to all officers or persons authorised by law to receive the same, or which relate to the official duties of such officers, without fee, to be paid by such officer or person; and to all others such certified copies upon the payment of twenty cents per folio therefor, and one dollar for the official seal and certificate thereon.

SEC. 5. He shall make and preserve a full and complete record of all the proceedings of the board of Territorial auditors, and file and preserve in his office all accounts and papers presented to or acted upon by them.

SEC. 6. He shall, three months before each election in each year, notify the sheriffs of the several counties of the offices to be voted for in such counties at the next general election, and of such vacancies to be filled in office at such election as may be provided by law.

SEC. 7. He shall file with the Territorial treasurer, immediately after receiving the same, so much of the abstract of the report of every mining corporation, and of all other reports and proceedings by law, filed or deposited in his office, and immediately after the same shall be so filed or deposited, whereby any sum of money shall require to be paid into the treasury, as shall show the amount so to be paid, together with the name of the corporation, board, officer, or person required by law to pay the same.

SEC. 8. He shall record all deeds and other evidences of title in the Territory, and all acts or parts of acts by which any grants of land have been or may hereafter be made to this Territory, in proper books, to be furnished at the expense of the Territory for that purpose, and when so recorded to cause the same to be accurately and distinctly platted.

SEC. 9. He shall cause to be published annually such laws, reports, and documents as the Legislature may direct, and not otherwise provided for; and shall distribute the same to all such officers within this Territory as are entitled to receive a copy of the Statutes, and to all such other officers as the Legislature may direct.

SEC. 10. For all services rendered under the provisions of this chapter, and not specially provided for, he shall receive such fees as shall be provided by law, and for all expenses incurred such compensation as shall be audited and allowed by the board of Territorial auditors; and for all other duties required of him by law he shall receive such fees and compensation as shall be provided; and when no such provision is made, then such compensation as the board of Territorial auditors shall audit and allow.

SEC. 11. He shall issue commissions to all Territorial officers appointed by the Governor and chosen at the elections, for which he shall be entitled to a fee of five dollars each. The fee for the affixing of the Territorial seal or the seal of his office to each and every document shall be one dollar.

SEC. 12. A copy of all laws, records, documents, reports, or other papers required by law to be made by him, or to be recorded or filed in his office duly certified by him under his seal of office, shall be *prima facie* evidence of their contents in all courts and places in this Territory.

CHAPTER XVI.

Of the Attorney-General.

SEC. 1. The attorney-general shall be appointed and commissioned by the governor, and shall take the oath of office prescribed by law; and shall give bond, with security to be approved by the governor, in the sum of ten thousand dollars, conditioned for the faithful performance of the duties of his office.

SEC. 2. The attorney-general shall attend each of the terms of the supreme court, and there prosecute or defend, as the case may be, all causes to which the Territory may be a party; also all causes to which any officers of the Territory, in their official capacity, may be a party; also all causes to which any county may be a party, other than those in which the interest of the county may be adverse to the Territory, or any officer of the Territory, acting in his official capacity; and after judgment obtained in any such cause, he shall direct such proceeding and sue out such process as may be required to carry the same into execution. He shall account for and pay over to the proper officer or board, any money which may come into his hands belonging to the Territory or any county.

SEC. 3. When required, the attorney-general shall give his opinion in writing, without fee, to the Legislature, or either House thereof, upon any question of law, and to the governor, and the secretary of the Territory, treasurer, and board of county commissioners. He shall keep a docket of all causes to which the State, or any officer of the State in his official capacity, or any county, may be a party, which docket shall at all times in business hours be open to the inspection of the public, and shall set forth the county, district, and court in which said cause shall have been instituted, tried, and adjudged, and whether civil or criminal causes; if civil causes, the nature of the demand, the stage of the proceedings, and when prosecuted to judgment, a memorandum of the judgment, of the process, if any issued thereon, and whether satisfied or not, and if not satisfied, the return of the sheriff on said process; and if criminal causes, the nature of the crime, the mode of prosecution, the stage of the proceedings, and when prosecuted to sentence, a memorandum of the sentence, and of the execution thereof, if the same shall have been executed, and if not executed, of the reasons of the delay or prevention of execution.

SEC. 4. The attorney-general shall also, on the fifteenth day of October annually, report to the governor the condition of the affairs of his department, and in said report make such suggestions as shall appear to him calculated to improve the laws of the Territory, which report shall contain a transcript from the docket which he is herein commanded to keep. He

shall communicate to the governor or either House of the Legislature, whenever requested, any information concerning his office.

SEC. 5. It shall be the duty of the attorney-general to prosecute all violations of the criminal laws of the Territory, in the several district courts therein, and to prosecute for and collect all fines, penalties, and forfeitures, accruing under the laws of this Territory, where no other express provision is made therefor; and also to prosecute all official bonds of Territorial and county officers, for any breach in their conditions, *whenever*, in his opinion, the public interests require it, or when directed thereto by lawful authority.

SEC. 6. The attorney-general may, with the consent of the governor, in cases which he shall deem of sufficient importance, employ counsel to assist him, the compensation of whom shall be determined and paid by the Board of Territorial Auditors.

SEC. 7. The attorney-general shall receive an annual salary of two thousand dollars, to be paid quarterly from the treasury on the warrant of the Board of Territorial Auditors drawn for that purpose, and in addition thereto, the Board of Territorial Auditors shall audit and pay him five hundred dollars a year for travelling, and any extraordinary expenses he may incur in the discharge of the duties of his office.

SEC. 8. In case of the absence or inability of the attorney-general to attend any of the terms of court, or attend to other business in vacation as provided in this chapter, he may at his own proper cost and expense, employ suitable and competent counsel to discharge his duties in that respect, and if the attorney-general or such counsel do not appear, the judge or judges of any such courts, may in like manner appoint some suitable and competent counsel to act in the place of the attorney-general until he return and enter upon the discharge of his duties.

SEC. 9. Whenever any person is appointed to act as attorney-general, either by the attorney-general or the court, he shall sign his name to all indictments and other papers in his official capacity as "special attorney-general," which shall have the same authority and validity as if signed by the attorney-general.

CHAPTER XVII.

Of the Territorial Treasurer.

SEC. 1. The Territorial treasurer shall reside and keep his office at the seat of government, and shall not absent himself from the Territory without leave of the Legislature or board of Territorial auditors.

SEC. 2. He shall be commissioned by the governor, before entering on the duties of his office, he shall take the oath of office prescribed by law, to be endorsed on his commission, and also filed in the office of the secretary of the Territory, and shall execute and deliver to the governor a bond payable to the Territory in the sum of forty thousand dollars, with sureties

to be approved by the governor, conditioned for the faithful performance of all the duties which may be required of him by law, and for the delivery to his successor in office of all books, papers, moneys, vouchers, securities, evidences of debt, and effects belonging to his said office.

SEC. 3. The secretary of the Territory shall procure and deliver to the treasurer a seal of office, with some suitable device, and having engraved around the margin thereof the words "Office of the Treasurer—Arizona," a description of which said seal shall be retained in the office of the secretary as a record; said seal shall be used to authenticate all writings, papers, and documents certified from such office. Until such seal is procured, the treasurer is authorized to use his private seal.

SEC. 4. He shall receive and keep all moneys of the Territory not expressly required by law to be received and kept by some other person; shall disburse the public moneys upon warrants drawn upon the treasury according to law, and not otherwise; and shall keep a just, true, and comprehensive account of all moneys received and disbursed; and shall deliver to his successor in office all moneys, records, books, papers, and other things belonging to his office in good order; and keep his office open for the transaction of business from 10 o'clock A. M. to 2 o'clock P. M. of every day of the year, Sundays excepted.

SEC. 5. He shall deliver to the governor, on the first day of November annually, a full exhibit of all moneys received by him into and paid out of the treasury, showing under separate and appropriate heads on what accounts and from what sources received, and for what particular object or service the same has been paid out by him; and shall give information in writing to either house of the Legislature whenever required, upon any subject connected with the treasury, or any duty of his office.

SEC. 6. The books, papers, and transactions of his office shall be open at all times for the inspection of the governor, board of Territorial auditors, of either house of the Legislature, or of any committee thereof, or person authorized by law.

SEC. 7. If the treasurer shall wilfully neglect or refuse to perform any duty enjoined by law or, by color of his office, shall knowingly do any act not authorized by law, he shall be deemed guilty of a misdemeanor in office.

SEC. 8. In case of the absence or disability of the treasurer, the governor shall make an appointment of some suitable person to perform the duties of the office until a successor shall be elected and qualified, or until such absence or disability shall cease; and such person shall take the oath of office and execute the bond required of the treasurer, and shall receive the same compensation as is allowed by law to the treasurer in proportion to the time he shall be engaged in such service.

SEC. 9. The treasurer is authorized to employ a clerk in his office, who shall receive for his services such compensation as may be allowed by law.

SEC. 10. He may also, with the approval of the governor, appoint a deputy-treasurer and remove him at pleasure, and for whose acts, as well also for all clerks and servants employed in his office, he shall be responsible

—which deputy shall give bonds in a sum not less than twenty thousand dollars, containing the conditions of the bond given by the treasurer, as nearly as applicable, and which bond shall be approved by the governor. When such bond shall have been given and approved, and filed in the office of the secretary of the Territory, and he shall take the oath prescribed by law, he may enter upon the duties of his office and, in the absence or inability of the treasurer, shall perform the duties of that office, subject to all the provisions of law applicable to the Territorial treasurer and his official duties.

SEC. 11. The said treasurer shall, on the first Monday of each month, file a statement in the office of the secretary of the Territory, showing distinctly and plainly—1. The moneys received by him during the preceding month, from whom received, on what account, the particular fund or funds to which the same is credited, and the amount credited to each separate fund. 2. The payments and disbursements made by him during the preceding month, on what account or for what purpose and particular fund, and the amount thereof, out of which such payment or disbursement was made.

SEC. 12. On or before the first day of October in each year he shall furnish to each county treasurer an account current, exhibiting all the transactions between his office and the office of such county treasurer, and what amount of money due to or from the same, and on what account. Upon the settlement of any accounts with the county treasurer, he shall pay such treasurer any balance that may be found due such county, out of any moneys appropriated by law for that purpose.

SEC. 13. He shall have power to administer all oaths or affirmations required or allowed by law, in matters touching the duties of his office, and shall perform all duties not enumerated in this chapter which may be enjoined by law.

CHAPTER XVIII.

Of the Territorial Reporter.

SEC. 1. A reporter of the decisions of the supreme court, to be called the Territorial reporter, shall be appointed by the justices of the supreme court, as often as a vacancy shall occur, who shall hold his office during the pleasure of said justices.

SEC. 2. The Territorial reporter, before entering upon the duties of his office, and within thirty days after notice of his appointment, shall take and subscribe the oath of office before one of the justices of the supreme court, and cause the same to be filed in the office of the secretary of the Territory.

SEC. 3. It shall be the duty of the justices of the supreme court to prepare and deliver to the reporter full notes of all decisions made by them in their respective courts, at law and in equity, which they shall deem of sufficient importance to publish.

SEC. 4. The Territorial reporter shall faithfully and truly prepare all such decisions for publication; and when it shall be necessary to a proper understanding of the decision, he shall report therewith a brief statement of the case, and of the arguments of the counsel therein.

SEC. 5. As often as the decisions of either of said courts shall be sufficient to constitute a volume of convenient size, it shall be the duty of the reporter to procure to be printed and published, in a neat and substantial manner, and upon the most advantageous terms practicable, an edition of one thousand copies of such reports; and upon the completion of such publication the board of Territorial auditors shall draw their warrant upon the Territorial treasurer, in favor of the reporter, for the costs of publication.

SEC. 6. Two hundred copies of said reports shall be deposited by the reporter with the secretary of the Territory, to be distributed as follows: Two copies to the library of the Congress of the United States; one copy to the library of each of the States and Territories; one copy to the library of the University of the Territory or State; one copy to be kept in the office of the probate clerk of each county in this Territory; two copies to the library for the use of the supreme court, and one copy for the library of each district court, and the remainder of said two hundred copies to be deposited in the Territorial library.

SEC. 7. The secretary of the Territory may exchange any such reports deposited in the Territorial library, in pursuance of the preceding section, after reserving therein at least ten copies of each, for such other reports or other works on law or equity as the justices of the supreme court shall designate; which reports, or other works procured by such exchange, shall be deposited in the library for the use of the supreme court.

SEC. 8. The remaining four hundred copies of said reports shall be offered for sale by the reporter, at a price not exceeding five dollars and fifty cents for each copy sold to, and for the use of residents of this Territory, and seven dollars for each copy sold to, or for the use of persons residing out of this Territory.

SEC. 9. The reporter may, in his discretion, exchange any number of copies of said reports, not exceeding two hundred, for the reports of the decisions of courts of other States, and sell the reports received in exchange, if he shall deem it advantageous to do so.

SEC. 10. The Territorial reporter shall receive an annual salary of five hundred dollars, payable quarter yearly, out of any moneys in the Territorial treasury belonging to the general fund, not otherwise specially appropriated by law; and shall also be entitled to all the profits arising from the sale of the reports, after refunding to the Territorial treasury the cost of publishing the same.

SEC. 11. Upon the publication of each and every edition of reports, pursuant to the foregoing provisions, and before any warrant shall be drawn by the board of Territorial auditors for the cost of such publication, the reporter shall execute and file with the secretary of the Territory a bond to the Territory of Arizona, in the penal sum of five thousand dollars, with sufficient sureties to be approved by the said secretary, conditioned to

account to the board of Territorial auditors for, and to pay over to the Territorial treasurer all such moneys as he shall receive for the Territory on account of the sale of said reports.

SEC. 12. It shall be the duty of the Territorial reporter to attend the several terms of the supreme court, and to report briefly, and publish with the cases usually heretofore reported, any such cases of practice and other matters disposed of at the hearing, as the court shall deem of sufficient importance to be reported.

SEC. 13. It shall be lawful for the said reporter to receive, at the close of each term of the supreme court, all written opinions delivered at said term, in cases which the court shall direct to be reported; and he shall cause accurate copies of said opinions to be made, and the originals to be returned to the offices where they properly belong, without unnecessary delay.

SEC. 14. The actual and necessary expenses incurred by the reporter, in the discharge of the duties hereby imposed, shall be paid him upon the allowance of the board of Territorial auditors, who shall draw their warrant for the sum so allowed, and the same shall be paid by the Territorial treasurer.

CHAPTER XIX.

Of the Territorial Paper.

SEC. 1. The newspaper known as the *Arizona Miner*, published in this Territory, is hereby declared to be the official paper of the Territory.

SEC. 2. All laws, reports, official proceedings and legal notices, required by law to be published, and published in said paper, may be read therefrom in any court or place within this Territory as the laws thereof, or the contents of any such report, official proceedings, or legal notices, and shall have the same force as the laws published in any statute book, or a certified or sworn copy of any such report, official proceedings, or legal notice, as the case may be.

SEC. 3. The proprietor of such official paper shall cause one copy thereof to be regularly sent to the governor, secretary of the Territory, Territorial treasurer, and clerk of the supreme court, at the expense of the Territory, and one copy to each county recorder and the clerk of each district court, at the expense of the proper counties, and such officers shall regularly file and preserve the same in their several offices for public use, in the same manner as other public records of their office: Provided, that when there shall have accumulated fifty-two or more of such papers in any office, such officer may cause the same to be substantially bound in a volume, at the expense of the Territory or county, as the case may be, and shall keep and preserve such volume, when so bound, in his office for the purposes aforesaid.

SEC. 4. All expenses incurred on behalf of the Territory, under the pro-

visions of the three preceding sections, shall be audited and paid by the board of Territorial auditors, and all expenses incurred by the several counties under the same, by the board of county commissioners.

SEC. 5. The fees for publication in such paper shall be as follows: For all official reports of any board or officer required to be published, if published therein, forty cents per folio for one insertion. For all legal notices, citations, summons, or any other proceeding or advertisement, one dollar per folio for the first insertion, and fifty cents per folio for each subsequent insertion.

SEC. 6. The term "folio," when used as a measure for computing fees or compensation, shall be construed to mean one hundred words, counting every figure necessarily used as a word, and any portion of a folio, when in the whole draft or paper there shall not be a complete folio, and when there shall be any excess over the last folio, shall be computed as a folio.

SEC. 7. Whenever by law any of the publications mentioned in this chapter shall be published in any other paper, the same fees shall be allowed therefor as herein provided.

CHAPTER XX.

Of the Board of Territorial Auditors.

SEC. 1. The governor, secretary, and attorney-general shall constitute a board of Territorial auditors, and as such they shall have power, and it shall be their duty, annually, and on or before the first Monday of November in each year, and at any other time in their discretion, to enter into a full settlement and final adjustment with every officer and agent of the Territory, of all debts, credits, claims and demands of whatsoever description between such officer or agent and this Territory. And also to examine, settle, and adjust all other lawful claims and demands against this Territory, which may be presented by any other person or persons, the settlement of which is not otherwise provided by law; but such board shall not allow and audit any claim against the Territory unless the same shall be established by competent testimony; and said board shall keep a record of its proceedings, which shall contain each claim and its items, an abstract of the evidence taken, the amount adjusted and settled in favor of the person or persons presenting the claims or in favor of the Territory; and any member of said board shall have power to administer oaths to parties or witnesses in any proceedings under this chapter, to examine any such parties or witnesses under oath, to issue subpœnas to any part of the Territory against witnesses, and to enforce obedience to such subpœnas in the same manner as courts of law are empowered to do, to set off any legal or equitable claim of the Territory against such person or persons, upon proof of the same, and to adjourn from time to time as they may deem necessary.

SEC. 2. As soon as practicable after the expiration of the official term, or the resignation of any receiving or disbursing officer of this Territory,

the secretary of the Territory shall give notice to the board of Territorial auditors, and to such officer or agent, to meet at the office of the secretary for the purpose of making a full and final settlement of the accounts of such officer or agent, and the said board shall proceed thereon in the same manner as is provided in relation to the annual settlement of said account.

SEC. 3. The said board of Territorial auditors shall have power at all times to examine the books, papers, vouchers, moneys, and all other things pertaining to the Territorial treasurer, and if, upon any such examination or upon any settlement made with him as herein provided, they shall find a deficiency in any of the public moneys which shall have come into his hands as such treasurer, or that the same have been used by him for any other than a lawful purpose, or have been misapplied or squandered, and cannot be immediately accounted for and replaced by him, then in any such case the said board of Territorial auditors shall be authorized, upon the order of the governor, with such assistance as shall be necessary, to enter into and take immediate possession of all the books, papers, vouchers, moneys, effects, and property belonging or pertaining to the office of Territorial treasurer, and immediately proceed to make an inventory and statement of the same, which inventory and statement they shall enter at large upon their record. After such statement and inventory shall be completed, and it shall be ascertained that the treasurer has been guilty of any neglect or default in this section mentioned, the governor shall issue an order suspending such treasurer from the exercise of any of the duties or functions of said office; or if satisfied that he is a defaulter and neglects to immediately pay over the balance found due from him upon such investigation or settlement, the said order shall be so made as to remove him absolutely from the office of Territorial treasurer, and it shall be the duty of the governor to cause a copy of such order to be served upon such treasurer, if to be found in the Territory, to file the same and have it recorded with the proceedings of said board, and publish a copy in the official paper of the Territory.

SEC. 4. In case of the removal of the Territorial treasurer, as provided in the preceding section, the governor shall immediately appoint some suitable person to the office of Territorial treasurer, who shall be the Territorial treasurer for the unexpired term, and who shall take the oath of office and give the bonds required by law to be given by that officer, and exercise all the rights, and be subject to all the liabilities pertaining to the same; and in case the treasurer be suspended, the governor shall appoint some suitable person temporarily to discharge the duties of said office, who shall take the oath and give the bonds required of the treasurer, and shall discharge the duties, and be subject to the liabilities of such officer, until such former treasurer be restored, which may be done by the governor, after a full investigation of all the facts and circumstances upon which such suspension was made, and the said board become satisfied that there exists no just cause for removal.

SEC. 5. Upon the death of any Territorial treasurer, the said board of Territorial auditors are hereby empowered to take immediate possession of all the books, papers, vouchers, moneys, effects, and property pertaining to said office, and make a statement and inventory thereof, and the same file and record as provided in section three of this chapter, and the same retain until a successor shall be appointed and qualified agreeably to law.

SEC. 6. If upon the allowance of any claim, or upon a balance being struck upon any settlement made in pursuance of this chapter, it shall appear that the Territory is indebted to the person with whom such settlement is made, or to whom such claim shall be allowed, he shall be entitled to a warrant drawn by the governor and countersigned by the secretary forthwith upon the Territorial treasurer therefor, and if by law such claim should be paid out of any particular or specific fund, such warrant shall specify the fund out of which such payment shall be made, otherwise it shall be paid from the general fund; and if it shall appear upon such settlement that such party is indebted to the Territory, said board shall demand immediate payment for the amount due; and if such payment be not immediately made, the fact shall be entered upon the records of the board, and a copy thereof filed with the Territorial treasurer, and thereafter no payment shall be made by the treasurer to such person until such payment be made; and the attorney-general shall proceed forthwith to collect the same, if in the opinion of the board the interests of the Territory require it.

SEC. 7. All proper and reasonable costs, incurred on the part of the Territory for fees to witnesses, or in taking depositions, as well as incidental expenses in investigating claims, shall be audited, allowed, and paid by the said board.

SEC. 8. The governor shall be president of said board, and the secretary shall make, keep, and preserve the records thereof.

SEC. 9. That there be and is hereby appropriated out of the general fund, such sums of money as may be necessary to pay warrants that may be drawn upon claims allowed by the board of Territorial auditors under the provisions of this chapter.

SEC. 10. The board of Territorial auditors shall submit to the Legislature annually, at the commencement of its session, a report of their doings during the year next preceding.

SEC. 11. For all services rendered and expenses incurred by the members of said board of Territorial auditors, the said board may audit and pay the same in like manner as other claims against the Territory.

SEC. 12. Each member of the board of Territorial auditors, before he enters upon the duties of his office, shall take and subscribe the official oath required by law, and file the same in the office of the clerk of the supreme court.

CHAPTER XXI.

"*Of the Militia.*"

SEC. 1. The governor of this Territory shall, by virtue of his office, be commander-in-chief of all the military forces now or hereafter to be raised therein.

SEC. 2. The commander-in-chief may appoint five aids with the rank of lieutenant-colonel, one adjutant-general with like rank, who may, in the discretion of the commander-in-chief, be authorized to act as quartermaster and inspector-general, and one private secretary with the rank of major.

SEC. 3. The adjutant-general shall give bonds for the faithful accounting of all the property and money that shall come into his hands by virtue of his office, with sufficient sureties to be approved by the commander-in-chief in such sums as he shall determine, which shall not be less than ten thousand dollars; when thus qualified he shall

1. Issue, sign, and transmit all general orders of the commander-in-chief, whether of detail, instruction, or movement of the militia, and all general regulations which may be established, and obey all orders from him relative to carrying into execution the laws of the United States and this chapter, and perfecting the system of military discipline established by law.
2. He shall be charged with all the correspondence between the commander-in-chief and officers of the several States and Territories, the secretary of war, the adjutant-general of the army, and other persons in official stations, on the subject of militia affairs, and keep a record of such correspondence.
3. He shall keep a record of all general and special orders and regulations, and cause the same to be published whenever the commander-in-chief shall direct.
4. He shall keep a roster of all the commissioned officers of the militia of this Territory, with their residence, rank, the corps to which they belong, the number and date of their commissions, and the time when issued, the number and date of all discharges, removals, deaths, and promotions.
5. He shall make out and issue all commissions and discharges directed by the commander-in-chief.
6. Every member of a volunteer company who, during the preceding year, has performed military duty as required of him by law, shall, for the year next succeeding the performance of such duty, be exempt from the payment of any tax assessed against his person for labor on highways.
7. He shall prepare and provide the necessary rosters and books of record; the forms and blanks for commissions, discharges, returns, and other papers required by the laws and customs of this Territory, at the expense of the Territory, and distribute the same to the officers and companies entitled to them, upon a requisition therefor.
8. He shall make a return in duplicate of all the militia in the Territory, with the arms, accoutrements, and ammunition; one copy of which he shall deliver to the commander-in-chief on or before the first day of November, and transmit the other to the President of the United States, on or before the first day of December annually.
9. He shall keep in good repair, and attend to the due preservation, safekeeping, and cleaning of the ordnance, arms, accoutrements, ammunition, munitions of war, and implements of every description, the property of this Territory, and he shall at all times have the control and disposition of the same for that purpose.
10. He shall dispose to the best advantage of all powder, arms, ammunition, accoutrements, tools, implements and warlike stores of every kind, the property of the Territory, that shall be deemed unsuitable for the use of the Territory; and, from time to time, render a just and true account of all sales made by him, and shall pay the proceeds of such sale into the treasury.

11. He shall report annually, on or before the first day of November, to the commander-in-chief, a true and particular statement, showing the actual situation and disposition of the ordnance, arms, ammunition, and other munitions of war, property, and things, which in anywise appertain to, or respect the department confided to his keeping.

12. He shall also make return, annually, on or before the first day of December, to the commander-in-chief, of the ordnance, apparatus, arms, ammunition, stands of colors, musical instruments, and other military property distributed to each company of the militia, and the condition thereof.

SEC. 4. Nothing contained in the preceding section shall be construed to preclude the commander-in-chief from performing any of the duties therein mentioned, or from assigning any other officer or person to perform the same under such regulations as he may adopt.

SEC. 5. The compensation of the adjutant-general shall be determined by the board of Territorial auditors and audited and paid by them,—Provided that when in actual service, all payments made to him by the United States shall be taken into consideration by said board, in determining the compensation to be made him as aforesaid.

SEC. 6. The commander-in-chief may receive into the service of the Territory so many volunteer companies as he shall see proper, and may order them into such service, and for so long a time, as he shall deem expedient; and he shall have power to consolidate one or more companies or to disband the same whenever, in his opinion, such action shall be necessary.

SEC. 7. Whenever thirty or more men shall associate together for the purpose of forming a volunteer company, they shall apply to the commander-in-chief, either directly or through the adjutant-general, to be organized as such; and on receiving such application the commander-in-chief may so organize such company, and commission the officers for the same.

SEC. 8. Any volunteer company may adopt such constitution and by-laws for its government and discipline, not inconsistent with this chapter, as a majority of the members of the company shall deem proper; and all sentences and fines imposed in pursuance of such constitution and by-laws may be enforced and collected as hereinafter provided; and, when so collected, to be paid to the clerk of such company for the benefit of such company.

SEC. 9. Such complaint shall be entered by the commandant of the company before a justice of the peace of any county where such company may be, under oath, stating the cause of the forfeiture, and thereupon said justice shall issue his warrant for the apprehension of the person complained of, and the same shall be served by any constable of such county, who shall immediately arrest the person complained of, as named in said warrant, and bring him before such justice, who shall proceed to a hearing of the case; if, on such hearing, it shall appear to the magistrate that such forfeiture has been incurred without good cause being shown therefor, he shall thereupon impose a fine according to the nature of the case, with costs incurred, and execution shall issue against the goods and chattels of the person complained of; but no execution on such judgment shall run against the body of any defendant under the age of twenty-one years, nor shall any such defendant be committed to jail, by virtue of any execution issued under

the provisions of this chapter, for a longer time than two weeks. Provided that if such fine be not collected upon such execution, when such company is in the service of this Territory, the commander-in-chief, upon being requested, may in his discretion order the same to be retained out of any remuneration provided for such person, and paid over to the clerk for the use of such company.

SEC. 10. The commander-in-chief shall determine the force necessary, at any time, for the protection of any of the settlements or inhabitants of the Territory, and shall order and dispose of the same for that purpose in his discretion. He shall also determine the force necessary to prosecute a campaign or war against any hostile tribe or tribes of Indians, or to prevent or punish any incursions or encroachments they may make upon the inhabitants of this Territory or their property, and shall have full power to order such force into actual service, so long as he shall see fit, to direct their disposition, and appoint the proper officers to command them. Provided, that the volunteer companies shall first be called into actual service, before any draft shall be made from the persons liable to military duty, as hereinafter, in this chapter, provided.

SEC. 11. That all able-bodied white male inhabitants, or of Mexican or Spanish descent, between the ages of eighteen and forty-five years, residents of this Territory, and not exempted from serving in the militia by the laws of the United States and of this Territory, shall be subject to military duty. In addition to the persons exempted by the laws of the United States, the following shall be exempted from military duty:

1. All members of independent volunteer companies, who have served as such, armed, uniformed, and equipped, for the term of six years from the time of their enrolment, except in cases of insurrection or invasion;
2. Ministers and preachers of the Gospel.

Also the following persons shall be exempted from military duty:

1. Judges of the Supreme Court and Probate Courts;
2. The Secretary of the Territory, Territorial Treasurer, and Attorney General;
3. The members and officers of the Legislature during its session, and for fifteen days before and after each session;
4. Teachers of schools and other seminaries of learning;
5. All ferrymen and millers actually employed as such;
6. All commissioned officers who have served as such in the militia of this Territory, or in that of any of the United States, equipped and in uniform, for the term of five years;
7. Clerks of courts and recorders of counties.

SEC. 12. Whenever, in the opinion of the commander-in-chief, any military force is necessary to be raised for any of the purposes provided for in this chapter, or any other law of this Territory, greater than the volunteer force herein before provided for, he shall issue an order for that purpose, specifying the number to be raised, and the quota to be raised by each county, which shall be in proportion to the number subject to military duty in each county, as returned to the office of the clerk of county commissioners agreeably to law. He shall have power to order drafted into actual service such number of persons subject to military duty as he shall have so determined upon and expressed in such order; and shall also in such order appoint the time, which shall not be less than five days from the publication

of such order, when such draft will be made at the office of the recorder of the several counties of this Territory.

SEC. 13. At the time appointed in such order the county commissioners shall place the name of each person returned to the office of the Recorder, as subject to military duty, on a separate ballot, which shall be as near in size and shape to each other as may be, and put the same, separately folded, in a box prepared for that purpose, which shall be well shaken and the ballots mixed together before any shall be drawn therefrom; the judge of probate or sheriff shall then proceed to draw such ballots from the box separately, and open and read the name of the person on each ballot as drawn, and so continue until the number first drawn and read shall be equal to the number required for such draft, and contained in the order of the commander-in-chief, and the persons whose names are so first drawn shall be the persons drafted for the purposes of such order.

SEC. 14. The clerk of the board of county commissioners shall put down a list of the names of the persons so drafted, at the time of inspecting and reading such ballots, and number them consecutively as drawn; which he shall file and preserve in his office. He shall immediately make a copy of such list, numbered as aforesaid, and add thereto his official certificate that such list contains the names of all the persons drafted in pursuance of such order, and is a correct copy of the original list; which certified copy he shall immediately transmit to the commander-in-chief; he shall also make another certified copy of such list, and immediately deliver the same to the sheriff, under-sheriff, or some deputy-sheriff of the county, who shall immediately proceed to notify all the persons whose names are contained in such list, so far as the same can be found, that they are so drafted, which notice shall be sufficient by stating to such persons they are so drafted, or by exhibiting to, or reading to them such official statement, with the name of the person so notified; and thereafter, all persons so notified shall be considered as in the military service, agreeably to the law and the conditions upon which they were so drafted, and shall be entitled to all the privileges and subject to all the liabilities, penalties, and punishments, prescribed by law for persons in such military service.

SEC. 15. When such draft shall have been completed, as hereinbefore provided, it shall be the duty of the commander-in-chief to form the persons so drafted into companies of not less than forty, and not more than one hundred men, and to appoint and commission the proper officers therefor. The commander-in-chief shall possess the same power to determine and order the manner, kind, and time of their service, as is provided in this chapter in relation to the services of volunteer companies.

SEC. 16. Whenever any person in a volunteer company, or drafted into service, shall make application to be discharged on account of sickness or disability to the commander-in-chief, or commandant of a company, such officer shall immediately cause some surgeon or physician to examine such applicant in regard to such sickness or disability; and if, in the opinion of such surgeon or physician, such applicant is unfit for service by reason of such sickness or disability, and that the same is permanent, or of a character not to be recovered from within a reasonable time, such applicant shall, with the consent of such officer, be immediately discharged from service.

SEC. 17. Every commanding officer shall keep a company roll which shall

contain the names of all the officers, non-commissioned officers, musicians, and privates of his company, and shall correct the same from time to time as circumstances shall require. He shall also cause to be kept a record which shall contain a statement of the number of days' duty performed by each member of the company; the absence of any member and the cause of absence; the discharge of any member and the reasons therefor; and such other matters as shall be ordered by the commander-in-chief. A statement or abstract of which, when in actual service, he shall monthly transmit to the commander-in-chief, and at such other times as the commander-in-chief shall by order or notice require.

SEC. 18. The commissioned officers of each company, formed under the provisions of this chapter, shall be:—One captain, one first lieutenant, and one second lieutenant. The non-commissioned officers shall be—four sergeants and four corporals, with such number of musicians as the commander-in-chief shall order. The non-commissioned officers may be designated by the members of the company and receive their warrant of office from the commanding officer thereof:—Provided, any commandant of a company may specially designate any member of his company to perform any duties of a non-commissioned officer.

SEC. 19. The commander-in-chief shall have power, whenever, in his opinion, the exigencies of the public service require it, to suspend any commissioned officer, and designate some other officer to discharge his duties; or, when satisfied that such officer has been guilty of any neglect or dereliction of duty, or unofficer-like conduct, he may, by order, revoke and determine his commission, and discharge him from service, upon the recommendation of a court-martial, or court of inquiry, and appoint and commission some other person in his place to fill such office.

SEC. 20. The commander-in-chief shall have power to organize courts-martial, and to designate the number and names of commissioned officers to compose the same; such courts-martial, when organized, shall have power to try all offences against the militia laws of this Territory, committed by persons in the military service thereof; and to punish the same.

SEC. 21. All laws of congress relating to the government and discipline of the military force in the service of the United States, and the articles of war, as adopted by the authority of the United States, and not repugnant to, or inconsistent with the provisions of this chapter, are hereby adopted and declared to be binding and obligatory upon all persons in the military service of this Territory.

SEC. 22. After notifying the persons contained in the list mentioned in section fourteen of this chapter, so far as he is able to do, the sheriff, under-sheriff, or deputy, shall return such list to the clerk of the board of county commissioners, with a return thereon, certified by him in his official capacity, stating the manner in which he has executed the same; the names of the persons notified, and the names of the persons not notified, and the reasons therefor; and if it appear that any person named in said list has absconded, or concealed himself in order to evade such notice, he shall so state in his return, and such person shall be considered as notified agreeably to the provisions of said section fourteen. The clerk shall file and preserve such list and returns in his office.

SEC. 23. Any commissioned officer, appointed under the provisions of

this chapter, shall, before he enters on the duties of his office, take and subscribe the oath required by law to be taken by civil officers, which oath may be taken before the governor or any military officer who has previously taken and subscribed such oath, or before any civil officer authorized by law to administer oaths, which oath shall be endorsed on his commission, and a certificate of his having taken such oath, made by the officer administering the same, shall be filed in the office of the adjutant-general.

CHAPTER XXII.

Of Vacancies, Resignations, and Removals from Office.

RESIGNATIONS.

SEC. 1. Resignations shall be made as follows:

1. By the attorney-general, Territorial treasurer, judges of probate, notaries public, and officers of the militia—to the governor.
2. By members of the Legislature to the presiding officers of their respective houses, who shall immediately transmit the same to the governor.
3. By all other county and precinct officers to the board of county commissioners.

SEC. 2. It shall be the duty of all officers, bodies, or boards, to whom the resignation of any office contemplated in the last preceding section is authorized to be made, or who are authorized to fill any vacancy in any of said offices, or to order a special election therefor, when duly informed of the existence of such vacancy, to cause to be filed in the office of the secretary of the Territory a statement of the occurrence, with the date and cause of such vacancy.

SEC. 3. Every office shall become vacant on the happening of either of the following events, before the expiration of the term of such office:

1. The death of the incumbent;
2. His resignation;
3. His removal from office;
4. His ceasing to be an inhabitant of this Territory; or, if the office be local, of the district, county, township, city or village, for which he shall have been elected or appointed, or within which the duties of his office are required to be discharged.
5. His conviction of any infamous crime, or any offence involving a violation of his oath of office;
6. The decision of a competent tribunal, declaring void his election or appointment; or,
7. His refusal or neglect to take his oath of office, or to give or renew any official bond, or to deposit such oath or bond in the manner and within the time prescribed by law.

SEC. 4. The governor shall have power to fill, by appointment of some suitable person, any vacancy that may occur in the office of attorney-general, Territorial treasurer, judge of probate, notaries public, and officers of the militia, and for cause shall have power to remove any of the said officers.

SEC. 5. The board of county commissioners, with the approval of the district judge of the proper county, shall have power to fill by appointment any vacancy in the office of county treasurer, county recorder, sheriff, or constable, which several appointments shall be in writing, and filed in the office of the county recorder, and a certified copy thereof shall be by him immediately transmitted to the secretary of the Territory, to be filed in his office.

SEC. 6. All officers whose appointments are provided for in this chapter shall, before they enter on the duties of their office, take the oath and give the bonds required by law, and shall hold their several offices during the unexpired term for which their predecessors were severally elected or appointed.

SEC. 7. The board of county commissioners shall have power in their discretion to order a special election in any incorporated village or precinct within their respective counties, to fill any vacancy in the office of justice of the peace.

CHAPTER XXIII.

Of Education.

SEC. 1. There shall be established within the Territory of Arizona a University, for the purpose of educating youth in the various branches of literature, science, and arts, and which shall be known as "The University of Arizona."

SEC. 2. The said University shall be under the management, direction, government, and control of a board of regents, to consist of the following persons: The governor of the Territory for the time being, who shall be the president of such board; the judges of the supreme court of the Territory, and three resident property holders of the Territory, to be elected by the Legislature in joint session, and who shall hold their appointment for four years; provided, that such persons shall discharge the several duties imposed upon them by virtue of this chapter without any fee or charge against the Territory, except such sums for actual disbursements and travelling expenses as the Legislature shall hereafter provide.

SEC. 3. The said regents and their successors shall form, hereafter be, and they are hereby established and declared to be a body politic and corporate, with perpetual succession in deed and in law, by the name, style, and title of "The Board of Regents of the University of Arizona," by which name and title they and their successors in office shall be capable at law and in equity of suing and being sued, holding property, real, personal, and mixed, for the purposes mentioned in this chapter, and no other; of buying and selling, and otherwise lawfully disposing of property for the purposes herein expressed; and shall have power to make and use a common seal, and to alter the same at their pleasure. Four of such regents shall constitute a quorum to transact all business except the location of a site for such university, as hereinafter provided, which location shall receive the concurrence of at least five members of said board.

SEC. 4. For the erection and support of said University there shall be and hereby is appropriated the proceeds from the sale of all lands that have been or may hereafter be granted by the United States to the Territory for university purposes, or of moneys granted by the same for the like purpose, and the proceeds of all lands, money, or other property given by individuals or appropriated by the Territory for the like purpose, which shall be and remain a perpetual fund, the interest or income of which, together with the rents of all such lands as may remain unsold, shall be inviolably appropriated and annually applied to the specific object of the original gift, grant, or appropriation; and no such money, property, or proceeds shall, under any pretence, be applied, used, or loaned for any other uses or purposes whatsoever.

SEC. 5. Said university when established shall consist of: First. A department of literature, science, and the arts. Second. A department of natural history, including a history of the Territory. Third. Such other departments may be added as the regents shall deem necessary and the state of the university fund shall allow. And the said university shall be open to all persons resident of this Territory without charge of tuition, under the regulations prescribed by the regents, and to all other persons under such regulations and restrictions as the board may prescribe: Provided, that no person shall be refused admittance for his conscientious views in matters of religion, if he shall demean himself in a proper manner and conform to such rules as may be established.

SEC. 6. At any time after the expiration of one year after the first day of September next, the said board of regents may proceed to select a suitable site and locate said university, which site shall not contain less than one hundred and sixty acres of land, which may be received by them as a donation for that purpose, or they may purchase the same or any part thereof from individuals or from the government of the United States, and such site shall be selected and such location made on or before the first day of January, one thousand eight hundred and sixty-six.

SEC. 7. After such site shall have been selected and such location made, the said board, if the funds of such university will allow, may proceed to the erection of such university buildings upon such plan as they shall adopt, the expenses of which shall not exceed the amount of moneys applicable to that purpose; or they may rent suitable buildings at or near such site, and establish therein, and employ suitable professors and teachers therefor, including a professor in mineralogy, the study of such literature and sciences as they shall deem proper.

SEC. 8. The money arising or accruing under the provisions of this chapter, and applicable to the university, shall, until such site shall be selected, and proceedings commenced as provided in the preceding section, be deposited with the Territorial treasurer, to the credit of the said board of regents, which money shall be kept by said treasurer separate from all other moneys, and shall not be paid out or used by said treasurer in any manner, except by authority of said board of regents.

SEC. 9. The said board of regents, after the location of the site of the university, may appoint one of their number treasurer to said board, who shall give security in such amount and manner as said board shall determine, and no moneys shall be drawn from the Territorial treasurer except

by the treasurer of said board of regents, and only under such rules, orders, and regulations as the said board shall establish for that purpose.

SEC. 10. The said board of regents shall have power to make all needful rules and by-laws for the government of their own body, not inconsistent with the provisions of this chapter.

Common Schools.

SEC. 11. As soon as there shall have accumulated sufficient funds, and a necessity therefor exists, the Legislature shall provide for a system of common school education, at the public expense, and may at any time authorize a tax to be levied by school districts for the support of schools, until such system of common school education shall be established.

SEC. 12. The proceeds of the sale of all lands granted by congress to the Territory for that purpose, all appropriations made by the Territory, and the proceeds of all gifts, grants, or donations made by individuals or corporations for the like purpose, shall be and remain a perpetual fund, the interest, rents, and proceeds thereof to be inviolably applied to the objects of the original grant or gift, and to no other use or purpose whatsoever.

SEC. 13. Until the Legislature shall establish such system of common school education all moneys that shall accumulate for, and be applicable to that purpose, shall be paid into and remain with the Territorial treasurer, as a distinct and separate fund, to be known as the common school fund, and shall not be used, paid out, or applied to any other purpose.

Libraries.

SEC. 14. There shall be and hereby is established a Territorial library, to be located at the capital of the Territory, and the members of both houses of the Legislature, and the executive and judicial officers of the Territory shall, at all times, have free access thereto, under such regulations as shall be made by the secretary of the Territory, who is hereby made the Territorial librarian.

SEC. 15. All books, maps, plates, charts, engravings, and paintings donated by the United States, by the several States and Territories, and by individuals and corporations to this Territory, shall be deemed public property, and belong to and be deposited in the Territorial library, and all appropriations made by the Territory for that purpose shall be expended by the librarian in the purchase of such books, maps, charts, engravings, and paintings, as by such appropriations directed, and deposit the same in such library.

SEC. 16. One-fourth part of all the moneys appropriated by the Territory or directed to be used for library purposes, shall be applied to the purchase of such law books as the judge of the supreme court shall direct, until otherwise ordered by the Legislature, which law books, when so purchased, shall form a part of the Territorial library, for the use of the executive, legislative, and judicial officers of the Territory.

SEC. 17. The Territorial librarian shall cause all books and property of the Territorial library to be properly stamped or marked, and shall, on or before the first Monday in September in each year, make out and deliver to the governor a full catalogue of all the books, maps, plates, charts, engravings, and paintings belonging to the Territorial library, in his possession, and such catalogue shall be published annually for the use of the Legislature.

Historical Department.

SEC. 18. There shall be established and connected with the Territorial library an historical department, the object of which shall be to collect, preserve, and publish the natural and political history of the Territory. For this purpose the librarian shall procure as far as possible all writings, histories, letters, lectures, essays, maps, charts, and books relating to said Territory and its history, and carefully preserve the same. In like manner he shall procure specimens of geology, mineralogy, and botany, found or produced within the Territory, and cause the same to be carefully labelled, with the date of procuring the same, and the locations where found or produced. He shall cause the same to be carefully packed in boxes and cases suitable for examination, and retain the same within the library.

SEC. 19. The said librarian shall also procure full copies of all newspapers heretofore or hereafter published in the Territory, and cause the same to be bound in suitable volumes, and deposit and keep the same in the library. In like manner he shall procure at least one copy of all pamphlets, magazines, and books published in the Territory for the use of the library.

SEC. 20. Whenever there shall have accumulated in said historical department sufficient manuscript papers relating to the history of the Territory to make a volume of at least two hundred pages, the said librarian, if in his opinion and that of the governor the same is of sufficient importance, shall cause the same to be published at the expense of the Territory, applying the proceeds of the sales of such book to pay the expenses of publication, so far as the same may be necessary for that purpose.

SEC. 21. An assistant librarian may be appointed by the librarian for the historical department, whose duties shall be prescribed by the librarian, and his compensation fixed by law; Provided, that after a university shall be established and an historical department therein shall be in operation, the historical department of the library may be transferred to the historical department of the university, and upon such transfer being made, the duties and compensation of such assistant librarian shall cease.

CHAPTER XXIV.

Of General and Special Elections.

SEC. 1. There shall be held throughout the Territory, on the first Wednesday in September of each year, the first of which shall be in the year one thousand eight hundred and sixty-five, an election for members of the Legislative Assembly, and such officers as may be required by law to be chosen at such election, to be called the general election. Provided that members of the Legislative Council shall be elected for two years.

SEC. 2. Special elections shall only be held to fill the vacancies in the office of members of the Legislature, or delegate to Congress, on the proclamation of the governor for that purpose. Special elections shall be conducted, and the votes canvassed and returned in the same manner, as nearly as may be, as general elections.

SEC. 3. It shall be the duty of the governor, at least thirty days before any general election, to issue his proclamation, designating the offices to be filled at such election, and to transmit a copy thereof to the county recorder and sheriff of each county of the Territory.

SEC. 4. It shall be the duty of the sheriff to give at least ten days' notice thereof, by setting up, at each usual place of holding elections in his county, a copy of such proclamation, and by inserting the same in some newspaper published in the county, if any be published therein.

SEC. 5. Whenever it is necessary to order a special election, under the provisions of section two of this chapter, the governor shall issue his proclamation, ordering such election and appointing the time at which it is to be held, and the sheriff of each county in which such election is to be held shall give notice thereof, as required in section four of this chapter in regard to general elections.

Of the Qualifications and Disabilities of Electors.

SEC. 6. Every white male citizen of the United States, and every white male citizen of Mexico, who shall have elected to become a citizen of the United States under the treaty of peace exchanged and ratified at Quintero on the 30th day of May, 1848, and the Gadsden treaty of 1854, of the age of twenty-one years, who shall have been a resident of the Territory six months next preceding the election, and the county or precinct in which he claims his vote ten days, shall be entitled to vote at all elections which are now, or hereafter may be, authorized by law.

SEC. 7. For the purpose of voting, no person shall be deemed to have gained or lost a residence by reason of his presence or absence in the service of the United States; nor while engaged in the navigation of the waters of this Territory, or of the United States, or of the high seas; nor while a student of any seminary of learning; nor while kept at any almshouse or other asylum; nor while confined in any public prison.

SEC. 8. No idiot or insane person, or person convicted of any infamous

crime, shall be entitled to the privileges of an elector. A crime shall be deemed infamous which is punishable by death, or by imprisonment in the State prison.

SEC. 9. Absence from this Territory on business of the Territory, or of the United States, shall not affect the question of residence of any person.

Of the Place of Holding Elections, and also of Inspectors, Judges, and Clerks of Elections.

SEC. 10. The election shall be held in each precinct established by law, *provided* that any precinct containing over four hundred voters may be divided by the board of county commissioners, and an election held in each.

SEC. 11. The justice of the peace in each precinct, and two qualified electors of such precinct, shall constitute a board of judges of election. The justice shall be chairman of the board, if present; if not, the board shall appoint a chairman from among their own number, who shall have power to fill any vacancy that may occur in said board.

SEC. 12. It shall be the duty of each inspector to be at the place where the polls are to be opened, in the precinct for which he is appointed, from eight o'clock in the morning until sunset, on the day of the election. Should such inspector not appear at eight o'clock in the morning, the electors present at the place where the polls are to be opened may appoint an inspector for the precinct.

SEC. 13. The board of inspectors for each precinct shall, before the time of opening the polls, appoint two suitable persons to act as clerks.

SEC. 14. Before any election shall be opened, the inspector, judges, and clerks shall each, before any officer authorized to administer oaths, take an oath that he will faithfully and impartially discharge the duties assigned him by law. If there is no person present authorized to administer oaths, the inspector shall administer the same to the judges and clerks, and one of the judges shall then administer the oath to the inspector.

Of Opening the Polls: of Voting and Challenges.

SEC. 15. At all elections the polls shall be opened at eight o'clock in the morning, and shall continue open until sunset, at which time the judges shall close the polls: Provided, that the judges of the election may take a recess of one hour at any time they may think proper during the day, before three o'clock in the afternoon.

SEC. 16. The board of judges, before they commence receiving ballots, shall cause it to be proclaimed aloud at the place of voting that the polls are opened.

SEC. 17. The voting shall be by ballot. The ballot shall be a paper ticket containing the names of the persons for whom the elector intends to

vote, and designating the office to which each person so named is intended by him to be chosen.

SEC. 18. Whenever any person offers to vote, the inspector shall pronounce his name in an audible voice, and if there be no objection to the qualification of such person as an elector, shall receive his ballot, and in the presence of the other judges put the same, without being opened or examined, into the ballot-box.

SEC. 19. The name of each elector whose ballot has been thus received, shall be immediately entered by each clerk in the column of his poll-list, headed "names of voters," numbering each name in the additional column, as it is taken down, so that it may be seen at any time whether the two lists agree.

SEC. 20. Any person offering to vote may be challenged as unqualified by the inspector or either of the judges, or by any legal voter; and it shall in all cases be the duty of the inspector and each of the judges to challenge any person offering to vote whom he shall know or suspect not to be duly qualified as an elector.

SEC. 21. When any person offering to vote is challenged, it shall be the duty of the board of judges to declare to him the qualifications of an elector.

SEC. 22. If such person shall still insist that he is entitled to vote, and the challenge shall not be withdrawn, the board of judges, in their discretion, may administer an oath or affirmation to the voter: You do swear (or affirm) that you will support the constitution of the United States and the laws of this Territory; that you will true faith and allegiance bear to the same, and defend them against all enemies whatsoever; that you are a citizen of the United States; that you are of the age of twenty-one years, according to the best of your information and belief; that you have resided in this Territory six months next preceding this election, and in this county (or precinct as the case may be) ten days, and that you have not before voted this day."

SEC. 23. If the person thus challenged shall take the oath as tendered to him by the board of judges, he shall be admitted to vote, and it shall not be lawful, after he has taken such oath or affirmation, for said board to examine any witnesses touching his want of qualifications; but if he shall refuse to take the oath or affirmation so tendered to him, his vote shall be rejected.

SEC. 24. If the vote of any person be challenged on the ground that he has been convicted of an infamous crime, or disfranchised by any court of competent jurisdiction, he shall not be required to answer any questions respecting such alleged conviction; and in the absence of any authenticated record of such facts, it may be competent for two disinterested witnesses upon oath to prove the same.

SEC. 25. When the polls are closed, proclamation thereof shall be made at the place of voting, and no vote shall be afterwards received.

Of Counting and Receiving the Votes, Declaring the Result of Elections, and of Certificates of Election.

SEC. 26. As soon as the polls are closed on the afternoon of the day of election, the judges shall open the ballot-box and commence counting the votes, and in no case shall the ballot-box be removed from the room in which any election may be held, until all the ballots are counted; the counting of the ballots shall in all cases be public. The ballots shall be taken out carefully, one by one, by the chairman or one of the judges, who shall open them, and read aloud the names of each person contained therein, and the office for which every such person is voted for. Each clerk shall write down each office to be filled and the name of each person voted for such office, and shall keep the number of votes by tallies, as they are read aloud by the chairman or judge. The counting of the votes shall be continued without adjournment until all are counted.

SEC. 27. If two tickets are folded together, they shall both be rejected; and if more persons are designated on any ticket for any office than are to be elected for such office, such part of the ticket shall not be counted for any of them; but no ticket shall be lost for want of form, if the board of judges can determine to their satisfaction the person voted for and the office intended.

SEC. 28. As soon as all the votes are read off and counted, a certificate shall be drawn up on each of the papers containing the poll-list and tallies, or attached thereto, stating the number of votes each person voted for has received, and designating the office to fill which he was voted for, which number shall be written in words at full length. Each certificate shall be signed by the clerks, the judges, and inspector; one of said certificates, with the poll-list and tally paper to which it is attached, shall be retained by the inspector and preserved by him at least six months. The ballots shall be preserved by the judge or chairman. The other of said certificates, with the poll-list and tally paper to which it is attached, shall be sealed up by the inspector, and endorsed "election returns," and be directed and delivered, or sent by the chairman to the county recorder of the county in which the election is held.

SEC. 29. The said package shall be delivered to the county recorder by one of the judges or clerks of election in person, or may be sent by private hand, or by mail. If sent by private hand, the person delivering it shall, before the county clerk, take and subscribe an affidavit that the package was delivered to him by one of the judges (naming him), that it has not been out of his possession since it was received, and has undergone no alteration while in his possession. The affidavit shall be endorsed on the package. If sent by mail, it shall be mailed by one of the judges; and the postmaster shall make on it an endorsement that he received it from one of the judges (naming him).

SEC. 30. No tally paper, poll-list, or certificate, returned from any election, shall be set aside or rejected for want of form; nor on account of its not being strictly in accordance with the directions of this act, if the same can be satisfactorily understood.

SEC. 31. On the tenth day after the day of each election, or as soon as he shall have received the returns from each precinct of the county, if he receive them

within that time, the county recorder shall proceed to estimate the vote of the county, a statement of which shall be drawn up and signed by him. The statement shall contain the names of the persons voted for; the office to fill which each person was voted for; the number of votes given at each precinct to each of such persons, and the number of votes given to each in the county; and the same shall be filed, together with the returns from each precinct in his office.

SEC. 32. The person having the highest number of votes given for each office to be filled by the votes of a single county, shall be declared elected; and the county recorder shall immediately make out and deliver, or send to him, a certificate of election, signed by said recorder, and authenticated with the seal of his office.

SEC. 33. When a county recorder is to be elected, the judge of probate shall examine the returns so soon as they are filed, and issue to the person chosen a certificate of election, in the form prescribed in the preceding section.

SEC. 34. When there are officers voted for who are chosen by the qualified electors of the Territory, it shall be the duty of each county recorder, so soon as the statement of the vote of his county is made out, as required in section thirty-one of this chapter, to copy therefrom so much as relates to the votes given for such officers, certify to the correctness thereof under his hand and seal of his office, and transmit the same to the secretary of the Territory, endorsing on the package the words "Election returns." On the sixtieth day after the day of election, or so soon as the returns shall have been received from all the counties of the Territory, if received within that time, the secretary of the Territory shall compare and estimate the vote and declare the person elected, and make out and file in his office a statement thereof, a certified copy of which shall be transmitted to the person so ascertained to be elected, which shall be a sufficient commission.

SEC. 35. No certificate shall be withheld on account of any defect or informality in the return of any election, if it can with reasonable certainty be ascertained from such return what office is intended, and who is entitled to such certificate; nor shall any commission be withheld by the governor on account of any such defect or informality of any returns made to the office of the secretary of the Territory.

SEC. 36. When elections are held for delegate in congress, the county recorder of each county shall make his returns thereof in the manner prescribed in this chapter to the secretary of the Territory, on the fortieth day after the day of election, or so soon as the returns shall have been received from all the counties of the Territory; if received within that time, the secretary of the Territory shall compare and estimate the votes given for such delegate, and certify to the governor the person having the highest number of votes, and it shall thereupon be the duty of the governor to give to such person a certificate of his election, sealed with the seal of the Territory. The returns of all elections for officers chosen by the qualified electors of the Territory, which are required by this chapter to be transmitted to the secretary of the Territory, shall likewise be opened on the sixtieth day after the day of election, or so soon as the returns shall have been received from all the counties of the Territory, if received within that time.

SEC. 37. Any elector of the proper county may contest the right of any person declared duly elected to any office, to be exercised in and for such county; and also any elector of a precinct may contest the right of any person duly elected to any office in and for such precinct, for any of the following causes:—

1st. For malconduct on the part of the board of judges, or of any member thereof.

2d. When the person whose right to the office is contested, was not at the time of the election eligible to such office.

3d. When the person whose right is contested shall have been, previous to such election, convicted of an infamous crime by any court of competent jurisdiction, such conviction not having been reversed, nor such person relieved from the legal infamy of such conviction.

4th. When the person whose right is contested has given to any elector or inspector, judge or clerk of the election, any bribe or reward, or shall have offered any such bribe or reward for the purpose of procuring his election.

5th. On account of illegal votes.

SEC. 38. No irregularity or improper conduct in the proceedings of the judges or any one of them, shall be construed to amount to such malconduct as to annul or set aside any election, unless the irregularity or improper conduct shall have been such as to procure the person whose right to the office may be contested, to be declared duly elected when he had not received the highest number of legal votes.

SEC. 39. When any election held for an office exercised in and for a county, is contested on account of any malconduct on the part of the board of judges of any precinct election, or any member thereof, the election shall not be annulled and set aside upon any proof thereof, unless the rejection of the vote of such precinct shall change the result as to such office in the remaining vote of the county.

SEC. 40. Nothing in the fifth ground of contest above specified, shall be so construed as to authorize an election to be set aside on account of illegal votes, unless it shall appear that an amount of illegal votes has been given to the person whose right to the office is contested, which, if taken from him, would reduce the number of his legal votes below the number of votes given to some other person for the same office, after deducting therefrom the illegal votes which may be shown to have been given to such other person.

SEC. 41. No person shall be competent to contest any election unless he is a qualified elector of the county or precinct in which the office is to be exercised.

SEC. 42. When any such elector shall choose to contest the right of any person declared duly elected to such office, he shall, within forty days after the return day of such election, file with the district clerk a written statement, setting forth specially: 1st. The name of the party contesting such election, and that he is a qualified elector of the district, county, or precinct, as the case may be, in which such election was held. 2d. The name of the person whose right to the office is contested. 3d. The office. 4th. The particular cause or causes of such contest, which statement shall be verified by the affidavit of the contesting party, that the matters and things therein contained are true, as he verily believes.

SEC. 43. When the reception of illegal votes is alleged as a cause of contest, it shall be sufficient to state generally, that illegal votes were given to the person whose election is contested in the specified precinct or precincts, which, if taken from him, will reduce the number of his legal votes below the number of legal votes given to some other person for the same office; but no testimony shall be received of any illegal votes, unless the party contesting such election shall deliver to the opposite party, at least three days before such trial, a written list of the number of illegal votes, and by whom given, which he intends to prove on such trial; and no testimony shall be received of any illegal votes except such as are specified in such list.

SEC. 44. No statement of the cause of contest shall be rejected, nor the proceedings thereon dismissed by any court before which such contest may be brought to trial for want of form, if the particular cause or causes of contest shall be alleged with such certainty as will sufficiently advise the defendant of the particular proceeding or cause for which his election is contested.

SEC. 45. Upon such statement being filed, it shall be the duty of the clerk to inform the district judge thereof, who shall give notice and order a special term of the district court, to be held at the court-house of the proper county on some day to be named by him, not less than ten nor more than twenty days from the date of such notice, to hear and determine such contested election.

SEC. 46. Said clerk shall also, at the same time, issue a citation for the person whose right to the office is contested, to appear at the time and place specified in said notice, which citation shall be delivered to the sheriff, and be served upon the party in person, or if he cannot be found, by leaving a copy thereof at the house where he last resided.

SEC. 47. The said clerk shall issue subpœnas for witnesses in such contested elections at the request of either party, which shall be served by the sheriff as other subpœnas, and the district court shall have full power to issue attachments to compel the attendance of witnesses who shall have been duly subpœnaed to attend, if they fail to do so.

SEC. 48. Said court shall meet at the time and place designated, to determine such contested election, and shall have all the powers necessary to the determination thereof. It may adjourn from day to day until such trial is ended, and may also continue said trial, before its commencement, to any time not exceeding twenty days, for good cause shown by either party upon affidavit, at the costs of the party applying for such continuance.

SEC. 49. Such court shall be governed in the trial and determination of such contested election, by the rules of law and evidence governing the determination of questions of law and fact, so far as the same may be applicable, and may dismiss the proceedings if the statement of the cause or causes of contest is insufficient, or for want of prosecution; after hearing the proofs and allegations of the parties the court shall pronounce judgment in the premises, either confirming, or annulling and setting aside such election, according to the law and right of the case.

SEC. 50. If in any such case it shall appear that another person than the

one returned has the highest number of legal votes, said court shall declare such person duly elected.

SEC. 51. The clerk, sheriff, and witnesses shall receive respectively the same fees from the party against whom judgment is given, as are allowed for similar services in the district court.

SEC. 52. If the proceedings are dismissed for insufficiency, want of prosecution, or the election is by the court confirmed, judgment shall be rendered against the party contesting such election, for costs in favor of the party whose election was contested.

SEC. 53. If such election is annulled and set aside, judgment for costs shall be rendered against the party whose election was contested in favor of the party contesting the same.

SEC. 54. Each party shall be liable for the costs created by himself to the officers and witnesses entitled thereto, which may be collected in the same manner in which similar costs are collected in the district court.

Of the Election of Delegate in Congress.

SEC. 55. At the general election to be holden on the first Wednesday of September, one thousand eight hundred and sixty-five, there shall be elected under the provisions of this chapter, a delegate to the congress of the United States for the term to commence on the fourth day of March next, and thereafter such delegate shall be elected at the general election held next previously to the commencement of his term of office, on the fourth day of March next after such election.

SEC. 56. In case of a vacancy in the office of delegate in congress by death, resignation, or otherwise, if it happen four months before any general election, the governor may order a special election to fill such vacancy; or he may order such vacancy filled at any general election after the same shall occur.

Of the Penalties for Misconduct at Elections, and for Violations of certain Provisions of this Chapter.

SEC. 57. If any person shall directly or indirectly use any threats, menace, or force, or any corrupt means or device, at, or previous to, any election held pursuant to this chapter, towards any elector, to hinder or deter him from voting at such election; or shall attempt by any means whatever to awe, restrain, hinder, or disturb any elector in the free exercise of the right of suffrage, he shall, upon conviction thereof, be fined in any sum not exceeding five hundred dollars.

SEC. 58. If any person shall furnish any elector wishing to vote at any election, held pursuant to the provisions of this chapter, who cannot read, with a ticket, such person informing or giving such elector to understand that it contains a name or names written or printed thereon, for whom such person wishes to vote, but that such ticket contains no such names, such person shall, upon conviction thereof, be fined in any sum not less than fifty nor more than five hundred dollars.

SEC. 59. If any person shall defraud any elector at any such election by deceiving and causing him to vote for a different person for any office than such elector desired or intended to vote for, or shall fraudulently attempt to deceive, and cause such elector thus to vote for a different person for any office than he intended and desired to vote for, such person, upon conviction thereof, shall be fined in any sum not less than fifty nor more than five hundred dollars.

SEC. 60. If any person not having the legal qualification of an elector, shall fraudulently vote or shall fraudulently attempt to vote at any election, such person on conviction thereof shall be fined in any sum not less than twenty nor more than two hundred dollars.

SEC. 61. If any elector shall vote more than once at any election, or shall knowingly hand in two or more tickets folded together, or shall attempt to vote more than once at the same election, he shall, on conviction thereof, be fined in any sum not exceeding five hundred dollars.

SEC. 62. If any inspector, judge, or clerk of any election, while acting as such, shall induce or attempt to induce any elector, either by menace or reward, or promise thereof, to vote differently from what such elector shall desire to vote, such person so offending shall, upon conviction thereof, be fined in any sum not less than fifty, nor more than five hundred dollars.

SEC. 63. If any chairman, judge, or clerk of an election, shall, previous to putting the ballot of any elector in the ballot-box, attempt to pry into or find out any name or names on such ballot which shall have been handed in by said elector in a folded form; or if any inspector, judge, or clerk of any election shall open, or suffer the folded ballot of any elector which has been handed in to the board of judges to be opened or examined into previous to putting the same into the ballot-box; or if any inspector, judge, or clerk of an election, shall make or place any mark or device on any folded ballot which has been handed in to the board of judges by any elector, with a view to ascertain the name of any person or persons for whom such elector shall have voted at any such election; or if any inspector, judge, or clerk shall have fraudulently or illegally allowed any elector to vote at any election, every such inspector, judge, or clerk so offending, upon conviction thereof, shall be fined in any sum not less than fifty, nor more than five hundred dollars.

SEC. 64. If the secretary of the Territory, or any chairman, judge, board of judges, recorder, or clerk of an election, or clerk of the district court, on whom any duty is enjoined by this chapter, shall be guilty of any wilful neglect of such duty, or of any fraudulent or corrupt conduct in the execution of any such duty, he or they so offending shall, on conviction thereof, be fined in any sum not exceeding two thousand dollars, to which may be added imprisonment in the county jail not exceeding one year.

SEC. 65. It is hereby made the duty of the secretary of the Territory, after the expiration of forty days from and after each election for a delegate to congress, to certify to the attorney-general any and all failures and omissions of the county recorders in their respective counties, to comply with the provisions of this chapter in returning or certifying the returns of certificates of any such election to the office of the secretary of the Territory; and every such certificate of the secretary of the Territory, sealed with the

Territorial seals, shall be sufficient presumptive evidence of any such failure or omission herein specified on the part of the county recorder, in any trial or indictment against him therefor.

SEC. 66. It shall be the especial duty of the attorney-general to present all violations of this chapter, which shall come to his knowledge, to the consideration of the proper grand jury.

SEC. 67. The term of all officers elected under the provisions of this chapter shall expire on the last day of November in the year in which such term of office ceases. And the term of all officers elected under such provisions, except delegates in congress, shall commence on the first day of December next, after the general election; but all vacancies filled at any such election shall commence and terminate according to the exigency of such vacancy.

CHAPTER XXV.

Of Official Oaths and Bonds.

SEC. 1. The official oaths of all Territorial and county officers required by law to be taken by them, and the official bonds so required to be given by them, shall be deposited and filed in the several offices hereinafter named, that is to say: the official oath and bond of the Territorial treasurer and attorney-general, in the office of the secretary of the Territory. The official oath and bond of the judge of probate, county recorder, sheriff, notaries public, justices of the peace, and constables, in the office of the clerk of the district court of the proper county. The official oath and bond of the county treasurer and clerk of the district court, in the office of the county recorder.

SEC. 2. A certified copy of any such oath or bond, made by the officer in whose office the same is required by the provisions of this chapter to be deposited and filed, shall be *prima facie* evidence of the contents thereof in all courts and places within this Territory.

SEC. 3. The officer in whose office any such oath or bond is required to be deposited, shall file the same, with the date thereon when the same was deposited, and shall carefully keep and preserve the same in his office, and not allow it to be taken therefrom except by lawful authority; he shall also, in a book to be kept for that purpose, note the time when such oath or bond was received and filed by him, with the name of the principal and sureties in each bond.

SEC. 4. The following form of oath, to be taken by any officer elected or appointed in this Territory, shall be deemed to be a sufficient oath of office, when taken and subscribed by such officer, except when some other form of oath shall be specially provided by law, that is to say:

TERRITORY OF ARIZONA, COUNTY OF

I, , do solemnly swear that I will support the Constitution of the United States and the laws of this Territory; that I will

true faith and allegiance bear to the same, and defend them against all enemies whatsoever, and that I will faithfully and impartially discharge the duties of the office of (name of office), according to the best of my abilities, so help me God.

SEC. 5. Any person not an officer, especially appointed by law to discharge any specific duty, or any duty in a fiduciary or other capacity, and from whom an oath for the discharge of such duty is required by law, may take the form of oath prescribed in the preceding section, when not otherwise provided.

SEC. 6. It shall be the duty of the attorney-general, or other officer prosecuting in behalf of the Territory, to prosecute all official bonds for any breach thereof; or the same may be ordered prosecuted by any court, officer, or board authorized by law or officially representing an interest in such bond; such bond may be prosecuted in the name of the "Territory of Arizona," and when any private person is interested in any such bond he may prosecute the same in such name for his use and benefit, and at his own proper cost and expense.

CHAPTER XXVI.

Of Title to Real Property by Descent.

SEC. 1. When any person shall die seized of any lands, tenements, or hereditaments, or of any right thereto, or entitled to any interest therein, in fee simple, or for the life of another, not having lawfully devised the same, they shall descend, subject to his debts, in manner following:

1. In equal shares to his children, and to the issue of any deceased child by right of representation; and if there be no child of the intestate living at his death, his estate shall descend to all his other lineal descendants; and if all the said descendants are in the same degree of kindred to the intestate, they shall share the estate equally; otherwise they shall take according to the right of representation;
2. If he shall leave no issue, his estate shall descend to his widow during her natural lifetime, and after her decease, to his father; and if he shall leave no issue or widow, his estate shall descend to his father;
3. If he shall leave no issue, nor widow, nor father, his estate shall descend in equal shares to his brothers and sisters, and to the children of any deceased brother or sister, by right of representation; Provided, that if he shall leave a mother also, she shall take an equal share with his brothers and sisters;
4. If the intestate shall leave no issue, nor widow, nor father, and no brother, nor sister, living at his death, his estate shall descend to his mother, to the exclusion of the issue, if any, of deceased brothers or sisters;
5. If the intestate shall leave no issue nor widow, and no father, mother, brother, nor sister, his estate shall descend to his next of kin in equal degree; excepting, that when there are two or more collateral kindred in equal degree, but claiming through different ancestors, those who claim

through the nearest ancestor shall be preferred to those claiming through an ancestor more remote: Provided, however;

6. If any person shall die leaving several children, or leaving one child, and the issue of one or more other children, and any such surviving child shall die under age, and not having been married, all the estate that came to the deceased child by inheritance from such deceased parent, shall descend in equal shares to the other children of the same parent, and to the issue of any such other children who shall have died, by right of representation;

7. If at the death of such child who shall die under age, and not having been married, all the other children of his said parent shall also be dead, and any of them shall have left issue, the estate that came to said child by inheritance from his said parent, shall descend to all the issue of other children of the same parent, and if all the said issue are in the same degree of kindred to said child, they shall share the said estate equally; otherwise they shall take according to the right of representation;

8. If the intestate shall leave a widow and no kindred, the estate shall descend to such widow;

9. If the intestate shall leave no widow nor kindred, his estate shall escheat to this Territory, for the use of the primary school fund.

SEC. 2. Every illegitimate child shall be considered as an heir of his mother, and shall inherit her estate, in like manner as if born in lawful wedlock; but shall not be allowed to claim, as representing his mother, any part of the estate of any other kindred, either lineal or collateral.

SEC. 3. If any illegitimate child shall die intestate, without lawful issue, his estate shall descend to his mother; if she be dead, it shall descend to the relatives of the intestate on the part of the mother, as if the intestate had been legitimate.

SEC. 4. When, after the birth of an illegitimate child, his parents shall intermarry, and his father shall, after the marriage, acknowledge him as his child, such child shall be considered as legitimate to all intents and purposes.

SEC. 5. The degrees of kindred shall be computed according to the rules of the civil law; and kindred of the half-blood shall inherit equally with those of the whole blood in the same degree, unless the inheritance come to the intestate by descent, devise, or gift of some one of his ancestors, in which case, all those who are not of the blood of such ancestor, shall be excluded from such inheritance.

SEC. 6. Any estate, real or personal, that may have been given by the intestate in his lifetime, as an advancement to any child or other lineal descendant, shall be considered as a part of the estate of the intestate, so far as it regards the division and distribution thereof among his issue, and shall be taken by such child or other descendant towards his share of the estate of the intestate.

SEC. 7. If the amount of such advancement shall exceed the share of the heir so advanced, he shall be excluded from any further portion, in the division and distribution of the estate, but he shall not be required to refund any part of such advancement; and if the amount so received shall be less than his share, he shall be entitled to as much more as will give him his full share of the estate of the deceased.

SEC. 8. If such advancement be made in real estate, the value thereof shall, for the purposes mentioned in the preceding section, be considered a part of the real estate to be divided; and if it be in personal estate, it shall be considered as part of the personal estate; and if, in either case, it shall exceed the share of real or of personal estate, respectively, that would have come to the heir so advanced, he shall not refund any part of it, but shall receive so much less out of the other part of the estate, as will make his whole share equal to those of the other heirs who are in the same degree with him.

SEC. 9. All gifts and grants shall be deemed to have been made in advancement, if they are expressed in the gift or grant to be so made, or if charged in writing by the intestate as an advancement, or acknowledged in writing as such by the child or other descendant.

SEC. 10. If the value of the estate so advanced shall be expressed in the conveyance, or in the charge thereof made by the intestate, or in the acknowledgment of the party receiving it, it shall be considered as of that value, in the division and distribution of the estate; otherwise, it shall be estimated according to its value when given, as nearly as the same can be ascertained.

SEC. 11. If any child, or other lineal descendant so advanced, shall die before the intestate, leaving issue, the advancement shall be taken into consideration, in the division and distribution of the estate, and the amount thereof shall be allowed accordingly by the representatives of the heir so advanced, in like manner as if the advancement had been made directly to them.

SEC. 12. Nothing in this chapter shall affect the title of a husband as tenant by the curtesy, nor that of a widow as tenant in dower, nor shall the same affect any limitation of an estate by deed or will.

SEC. 13. Inheritance or succession, "by right of representation," takes place when the descendants of any deceased heir take the same share or right in the estate of another person that their parent would have taken if living. Posthumous children are considered as living at the death of their parents.

CHAPTER XXVII.

Of Estates in Dower.

SEC. 1. The widow of every deceased person shall be entitled to dower, or the use during her natural life of one-third part of all the lands whereof her husband was seized of an estate of inheritance, at any time during the marriage, unless she is lawfully barred thereof.

SEC. 2. If a husband seized of an estate of inheritance in lands exchange them for other lands, his widow shall not have dower of both, but shall make her election to be endowed of the lands given, or of those taken in

exchange; and if such election be not evinced by the commencement of proceedings to recover her dower of the lands given in exchange, within one year after the death of her husband, she shall be deemed to have elected to take her dower of the lands received in exchange.

SEC. 3. When a person seized of an estate of inheritance in lands shall have executed a mortgage of such estate before marriage, his widow shall be entitled to dower out of the lands mortgaged, as against every person except the mortgagee, and those claiming under him.

SEC. 4. When a husband shall purchase lands during coverture, and shall at the same time mortgage his estate in such lands to secure the payment of the purchase money, his widow shall not be entitled to dower out of such lands, as against the mortgagee, or those claiming under him, although she shall not have united in such mortgage, but she shall be entitled to her dower as against all other persons.

SEC. 5. When, in either of the cases mentioned in the two last preceding sections, or in case of a mortgage in which she shall have joined with her husband, the mortgagee, or those claiming under him, shall, after the death of the husband, cause the mortgaged premises to be sold by virtue of such mortgage, and any surplus shall remain after payment of the moneys due thereon, and the costs and charges of the sale, such widow shall be entitled to the interest or income of one-third part of such surplus, for her life, as dower.

SEC. 6. If, in either of the cases above specified, the heir, or other person claiming under the husband, shall pay and satisfy the mortgage, the amount so paid shall be deducted from the value of the land, and the widow shall have set out to her, for her dower in the mortgaged lands, the value of one-third of the residue after such deduction.

SEC. 7. When a widow shall be entitled to dower out of any lands which shall have been aliened by the husband in his lifetime, and such lands shall have been enhanced in value after the alienation, such lands shall be estimated, in setting out the widow's dower, according to their value at the time when they were so aliened.

SEC. 8. When a widow is entitled to dower in lands of which her husband died seized, and her right to dower is not disputed by the heirs or devisees, or any person claiming under them, or either of them, it may be assigned to her, in whatever counties the lands may lie, by the judge of probate for the county in which the estate of the husband is settled, upon application of the widow or any other person interested in the lands; notice of which application shall be given to such heirs, devisees, or persons, in such manner as the judge of probate shall direct.

SEC. 9. For the purpose of assigning such dower, the judge of probate shall issue his warrant to three discreet and disinterested persons, authorizing and requiring them to set off the dower by metes and bounds, when it can be done without injury to the whole estate.

SEC. 10. The commissioners shall be sworn before a judge or justice of the peace to the faithful discharge of their duties, and shall, as soon as may be, set off the dower according to the command of such warrant, and make

return of their doings, with an account of their charges and expenses, in writing, to the probate court; and the same being accepted and recorded, and an attested copy thereof recorded in the office of the register of deeds of the county where the lands are situated, the dower shall remain fixed and certain, unless such confirmation be set aside or reversed on appeal; and one-half of the cost of such proceedings shall be paid by the widow, and the other half by the adverse party.

SEC. 11. When the estate out of which dower is to be assigned, consists of a mill, or other tenement which cannot be divided without damage to the whole, and in all cases where the estate cannot be divided by metes and bounds, the dower may be assigned of the rents, issues, and profits thereof, to be had and received by the widow as a tenant in common with the other owners of the estate.

SEC. 12. When a widow is entitled to dower in the lands of which her husband died seized, she may continue to occupy the same with the children or other heirs of the deceased, or may receive one-third part of the rents, issues, and profits thereof, so long as the heirs or others interested do not object, without having the dower assigned.

SEC. 13. A married woman residing within this Territory, may bar her right of dower in any estate conveyed by her husband, or by his guardian, if he be under guardianship, by joining in the deed of conveyance, and acknowledging the same as prescribed in the preceding chapter, or by joining with her husband in a subsequent deed, acknowledged in like manner.

SEC. 14. A woman may also be barred of her dower in all the lands of her husband, by a jointure settled on her with her assent before the marriage, provided such jointure consists of a freehold estate in lands for the life of the wife at least, to take effect in possession or profit immediately on the death of the husband.

SEC. 15. Such assent shall be expressed, if the woman be of full age, by her becoming a party to the conveyance by which it is settled, and if she be under age, by her joining with her father or guardian in such conveyance.

SEC. 16. Any pecuniary provision that shall be made for the benefit of an intended wife, and in lieu of dower, shall, if assented to as provided in the preceding section, bar her right of dower in all the lands of her husband.

SEC. 17. If any such jointure or pecuniary provision be made before marriage, and without the assent of the intended wife, or if it be made after marriage, she shall make her election after the death of her husband, whether she will take such jointure or pecuniary provision, or be endowed of the lands of her husband; but she shall not be entitled to both.

SEC. 18. If any lands be devised to a woman, or other provision be made for her in the will of her husband, she shall make her election whether she will take the lands so devised, or the provision so made, or whether she will be endowed of the lands of her husband; but she shall not be entitled to both, unless it plainly appears by the will to have been so intended by the testator.

SEC. 19. When a widow shall be entitled to an election under either of the two last preceding sections, she shall be deemed to have elected to take such jointure, devise, or other provision, unless, within one year after the death of her husband, she shall commence proceedings for the assignment or recovery of her dower.

SEC. 20. If a woman is lawfully evicted of lands assigned to her as dower or settled upon her as jointure, or is deprived of the provision made for her by will or otherwise, in lieu of dower, she may be endowed anew, in like manner as if such assignment, jointure, or other provision, had not been made.

SEC. 21. A woman being an alien, shall not on that account be barred of her dower, and any woman residing out of the Territory shall be entitled to dower of the lands of her deceased husband, lying in this Territory, of which her husband died seized, and the same may be assigned to her, or recovered by her, in like manner as if she and her deceased husband had been residents within the Territory at the time of his death.

SEC. 22. No woman, who shall be endowed of any lands, shall commit or suffer any waste on the same; but every woman so endowed shall maintain the houses and tenements, with the fences and appurtenances, in good repair, and shall be liable to the person having the next immediate estate of inheritance therein for all damages occasioned by any waste committed or suffered by her.

SEC. 23. A widow may remain in the dwelling-house of her husband one year after his death, without being chargeable with rent therefor, and shall have her reasonable sustenance out of his estate for one year.

SEC. 24. Whenever, in any action brought for the purpose, a widow shall recover her dower in lands of which her husband shall have died seized, she shall be entitled also to recover damages for the withholding of such dower.

SEC. 25. Such damages shall be one-third part of the annual value of the mesne profits of the lands in which she shall so recover her dower, to be estimated in a suit against the heirs of her husband, from the time of his death; and in suits against other persons from the time of her demanding her dower of such persons.

SEC. 26. Such damages shall not be estimated for the use of any permanent improvements made after the death of her husband, by his heirs, or by any other person claiming title to such lands.

SEC. 27. When a widow shall recover her dower in any lands alienated by the heir of her husband, she shall be entitled to recover of such heir, in an action, her damages for withholding such dower, from the time of the death of her husband to the time of the alienation by the heir, not exceeding six years in the whole; and the amount which she shall be entitled to recover from such heir, shall be deducted from the amount she would otherwise be entitled to recover from such grantee, and any amount recovered as damages from such grantee, shall be deducted from the sum she would otherwise be entitled to recover from such heir.

SEC. 28. When the widow shall have accepted an assignment of dower,

in satisfaction of her claim upon all the lands of her husband, it shall be a bar to any further claim of dower against the heir of such husband, or any grantee of such heir, or any grantee of such husband, unless such widow shall have been lawfully evicted of the lands so assigned to her as aforesaid.

SEC. 29. When a widow not having right to dower, shall, during the infancy of the heirs of the husband, or any of them, or of any person entitled to the lands, recover dower by the default or collusion of the guardian of such infant heir or other person, such heir or other person so entitled shall not be prejudiced thereby, but when he comes of full age, he shall have an action against such widow, to recover the lands so wrongfully awarded for dower.

SEC. 30. That in any suit hereafter to be commenced by any widow for the recovery of dower in lands, which were aliened by her husband in his lifetime, and where dower cannot be assigned therein by metes and bounds without injustice or manifest injury to the widow, or to the owner or owners, or person or persons in possession thereof, or some one of them, the court having cognizance of the matter may award and adjudge a sum of money in lieu of dower to be paid to the widow, or may assign to her, as tenant in common, a just proportion of the rents, issues, and profits of said lands, regard being had in all cases to the true value of the lands at the time of such alienation by the husband, and of the probable duration of the life of the doweress, at the time such sum of money shall be adjudged, or such rents, issues, and profits shall be assigned to her.

SEC. 31. Where dower in any lands may be claimed by two or more widows, the one whose husband was first seized therein shall be first entitled thereto; and in all cases where dower in any land shall have been assigned, or where it shall appear that the owner or owners, or person or persons having an interest therein, shall have made full satisfaction to, and has obtained a discharge from the person recovering or having a prior right to dower therein, by reason of the prior seizin of her husband, the said land shall not be subject to any other claim for dower during the lifetime of the person so recovering, or who has received satisfaction and given a discharge as aforesaid.

SEC. 32. When any man and his wife shall be seized in her right of any estate of inheritance in lands, the husband shall, on the death of his wife, if not disposed of by her in her lifetime otherwise than by will, hold the lands for his life, as tenant thereof by the curtesy: *Provided*, that if the wife, at her death, shall leave issue by any former husband, to whom the estate might descend, such issue shall take the same, discharged from the right of the surviving husband to hold the same as tenant by the curtesy.

CHAPTER XXVIII.

Of Wills.

SEC. 1. Every person of full age and sound mind, being seized in his own right of any lands, or of any right thereto, or entitled to any interest therein,

descendible to his heirs, may devise and dispose of the same by his last will and testament in writing; and all such estate not disposed of by the will, shall descend as the estate of an intestate, being chargeable, in both cases, with the payment of all his debts; and any married woman may devise and dispose of any real or personal property held by her, or to which she is entitled in her own right, by her last will and testament in writing, and may alter or revoke the same in like manner that a person under no disability may do the same.

SEC. 2. Every devise of land in any will hereafter made, shall be construed to convey all the estate of the devisor therein which he could lawfully devise, unless it shall clearly appear by the will that the devisor intended to convey a less estate.

SEC. 3. Any estate, right, or interest in lands, acquired by the testator after the making of his will, shall pass thereby in like manner as if possessed at the time of making the will, if such shall manifestly appear by the will to have been the intention of the testator.

SEC. 4. Every person of full age and sound mind, may, by his last will and testament, in writing, bequeath and dispose of all his personal estate remaining at his decease, and all his rights thereto, and interest therein, and all such estate, not disposed of by the will, shall be administered as intestate estate.

SEC. 5. No will made within this Territory, except such nuncupative wills as are mentioned in the following section, shall be effectual to pass any estate, whether real or personal, nor to charge or in any way affect the same, unless it be in writing, and signed by the testator, or by some person in his presence, and by his express direction, and attested and subscribed in the presence of the testator by two or more competent witnesses; and if the witnesses are competent at the time of attesting the execution of the will, their subsequent incompetency, from whatever cause it may arise, shall not prevent the probate and allowance of the will, if it be otherwise satisfactorily proved.

SEC. 6. Nothing contained herein shall affect the validity of a nuncupative will, in which the value of the estate bequeathed shall not exceed three hundred dollars, provided the same shall be proved by two competent witnesses; nor prevent any soldier, being in actual military service, nor any mariner, being on shipboard, from disposing of his wages and other personal estate by nuncupative will, as he might heretofore have done.

SEC. 7. All beneficial devises, legacies, and gifts whatsoever, made or given in any will to a subscribing witness thereto, shall be wholly void, unless there be two other competent subscribing witnesses to the same; but a mere charge on the lands of the devisor for the payment of debts shall not prevent his creditors from being competent witnesses to his will.

SEC. 8. But if such witness to whom any beneficial devise may have been made or given, would have been entitled to any share of the estate of the testator, in case the will was not established, then so much of the share that would have descended or been distributed to such witness as will not exceed the devise or bequest made to him in the will, shall be saved to him, and he may recover the same of the devisees or legatees named in the will,

in proportion to, and out of the parts devised or bequeathed to them.

SEC. 9. No will nor any part thereof shall be revoked, unless by burning, tearing, cancelling, or obliterating the same, with the intention of revoking it, by the testator, or by some person in his presence, and by his direction; or by some other will or codicil in writing, executed as prescribed in this chapter; or by some other writing, signed, attested, and subscribed in the manner provided in this chapter for the execution of a will; excepting only that nothing contained in this section shall prevent the revocation implied by law from subsequent changes in the condition or circumstances of the testator.

SEC. 10. Any will in writing, being enclosed in a sealed wrapper, and having endorsed thereon the name of the testator and his place of residence, and the day when, and the person by whom it is delivered, may be deposited by the person making the same, or by any person for him, with the judge of probate in the county where the testator lives, and the judge of probate shall receive and safely keep such will, and give a certificate of the deposit thereof.

SEC. 11. Such will shall, during the lifetime of the testator, be delivered only to himself, or to some person authorized by him by an order in writing, duly proved by the oath of a subscribing witness; and after the death of the testator, and at the first probate court after notice thereof, it shall be publicly opened by the judge of probate, and be retained by him.

SEC. 12. The judge of probate shall give notice of such will being in his possession, to the executor therein appointed, if there be one, otherwise to the persons interested in the provisions of the will; or if the jurisdiction of the case belongs to any other court, such will shall be delivered to the executor, or to some other trusty person, interested in the provisions of the same, to be presented for probate in such other court.

SEC. 13. No will shall be effectual to pass either real or personal estate, unless it shall have been duly proved and allowed in the probate court as provided by law, or on appeal, in the district court or supreme court; and the probate of a will of real or personal estate, as above mentioned, shall be conclusive as to its due execution.

SEC. 14. When any child shall be born after the making of his father's will, and no provision shall be made therein for him, such child shall have the same share in the estate of the testator as if he had died intestate; and the share of such child shall be assigned to him as provided by law in case of intestate estates, unless it shall be apparent from the will that it was the intention of the testator that no provision should be made for such child.

SEC. 15. When any testator shall omit to provide in his will for any of his children, or for the issue of any deceased child, and it shall appear that such omission was not intentional, but was made by mistake or accident, such child, or the issue of such child, shall have the same share in the estate of the testator as if he had died intestate, to be assigned as provided in the preceding section.

SEC. 16. When any share of the estate of a testator shall be assigned to

a child born after the making of a will, or to a child or the issue of a child omitted in the will, as hereinbefore mentioned, the same shall first be taken from the estate not disposed of by the will, if any; if that shall not be sufficient, so much as shall be necessary shall be taken from all the devisees or legatees, in proportion to the value of the estate they may respectively receive under the will, unless the obvious intention of the testator, in relation to some specific devise or bequest, or other provision in the will, would thereby be defeated; in which case, such specific devise, legacy, or provision, may be exempted from such apportionment, and a different apportionment may be adopted, in the discretion of the probate court.

SEC. 17. When a devise or legacy shall be made to any child or other relation of the testator, and the devisee or legatee shall die before the testator, leaving issue who shall survive the testator, such issue shall take the estate so given by the will, in the same manner as the devisee or legatee would have done, if he had survived the testator; unless a different disposition shall be made or directed by the will.

SEC. 18. All the estate of the testator, real and personal, shall be liable to be disposed of for the payment of his debts, and the expenses of administering his estate, and the probate court may make such reasonable allowance as may be judged necessary for the expenses of the maintenance of the widow and minor children, or either, constituting the family of the testator, out of his personal estate, or the income of his real estate, during the progress of the settlement of the estate, but never for a longer period than until their shares in the estate shall be assigned to them.

SEC. 19. If the testator shall make provision by his will, or designate the estate to be appropriated for the payment of his debts, the expenses of administration, or family expenses, they shall be paid according to the provisions of the will, and out of the estate thus appropriated, so far as the same may be sufficient.

SEC. 20. If the provision made by the will, or the estate appropriated, shall not be sufficient to pay the debts, expenses of administration, and family expenses, such part of the estate, real or personal, as shall not have been disposed of by the will, if any, shall be appropriated according to the provisions of the law for that purpose.

SEC. 21. The estate, real or personal, given by will to any devisees or legatees, shall be held liable to the payment of the debts, expenses of administration, and family expenses, in proportion to the amount of the several devises or legacies, except that specific devises and legacies, and the persons to whom they shall be made, may be exempted, if it shall appear to the court necessary, in order to carry into effect the intention of the testator, if there shall be other sufficient estate.

SEC. 22. When the estate given by any will shall be liable for the payment of debts and expenses, as mentioned in the preceding section, or is liable to be taken to make up the share of a child born after the execution of the will, or of a child, or of the issue of a child not provided for in the will as hereinbefore provided, the executor shall have a right to retain possession of the same, until such liability shall be settled by order of the probate court, and until the devises and legacies so liable shall be accordingly assigned by order of such court; and when the same can properly be done

any devisee or legatee may make his claim to such court, to have such liability settled, and his devise or legacy assigned to him.

SEC. 23. All the devisees and legatees, who shall, with the consent of the executor or otherwise, have possession of the estate given to them by will before such liability shall be settled by the probate court, shall hold the same subject to the several liabilities mentioned in the preceding section, and shall be held to contribute according to their respective liabilities to the executor, or to any devisee or legatee from whom the estate devised to him may have been taken for the payment of debts or expenses, or to make up the share of a child born after the making of the will, or of a child or the issue of a child omitted in the will; and the persons who may, as heirs, have received the estate not disposed of by the will as provided in this chapter, shall be liable to contribute, in like manner as the devisees or legatees.

SEC. 24. If any of the persons liable to contribute, according to the provisions of the preceding section, shall be insolvent and unable to pay his share, the others shall be severally liable for the loss occasioned by such insolvency, in proportion to, and to the extent of, the estate they may have received; and if any of the persons so liable to contribute, shall die before having paid his share, the claim shall be valid against his estate, in the same manner as if it had been his proper debt.

SEC. 25. The probate court may, by decree for that purpose, settle the amount of the several liabilities, as provided in the preceding sections, and decree how much, and in what manner, each person shall contribute, and may issue execution as circumstances may require; and the claimant may also have a remedy, in any proper action or complaint.

SEC. 26. Every will, when proved as provided in this chapter, shall have a certificate of such proof endorsed thereon or annexed thereto, signed by the judge of probate, and attested by his seal, and every will so certified, and the record thereof, or a transcript of such record certified by the judge of probate and attested by his seal, may be read in evidence in all courts within this Territory, without further proof.

SEC. 27. An attested copy of every will devising lands or any interest in lands, and of the probate thereof, shall be recorded in the registry of deeds of the county in which the lands thereby devised are situated.

SEC. 28. The word "executor," in this and the subsequent chapters, shall be construed to include an administrator with the will annexed.

SEC. 29. Any person owning any real estate or any interest therein, within this Territory, may, by his last will and testament, bequeath the same to his legitimate child or children, or natural child or children, or to his child or children by adoption, and to the issue of such child or children, during their natural lives, whether such issue be born before the date of the execution of such will or afterwards; and in such will may inhibit the alienation of such estate during the natural lives of such child or children, and of such issue; and such will, when proved and recorded agreeably to the provisions of law, shall have the effect to vest such real estate in accordance with the provisions therein contained.

CHAPTER XXIX.

Of Probate Courts—Jurisdiction.

SEC. 1. The probate court of each county shall be a court of record, and shall have a clerk and seal. The said probate court shall have the jurisdiction conferred in this chapter, and such other jurisdiction as shall be conferred by law.

SEC. 2. Wills shall be proved, letters testamentary or of administration shall be granted: First. In the county of which the deceased was a resident at or immediately previous to his death, in whatever place his death may have happened. Second. In the county in which he may have died, leaving estate therein, and not being a resident of the Territory. Third. In the county in which any part of his estate may be, he having died out of the Territory and not having been a resident thereof at the time of his death.

SEC. 3. When the estate of deceased is in more than one county, he having died out of the Territory and not having been a resident thereof at the time of his death, the probate court of that county in which any part of his estate is situated, in which application is first made for letters testamentary or of administration, shall have exclusive jurisdiction of the estate.

Of the Proof of Wills.

SEC. 4. Any person having the custody of any will shall, within thirty days after he shall have knowledge of the death of the testator, deliver it into the probate court which has jurisdiction of the case, or to the person named in the will as executor.

SEC. 5. Any person named as executor in any will shall, within thirty days after the death of the testator, or within thirty days after he has knowledge that he is named executor, present the will, if in his possession, to the probate court which has jurisdiction.

SEC. 6. If he intends to decline the trust, he shall, at the same time, file his renunciation in writing; if he intends to accept, he shall present with the will a petition praying that the will be admitted to probate, and that letters testamentary be issued to him.

SEC. 7. Every person who shall neglect to perform any duties required in the preceding sections, without reasonable cause, shall be liable to every person interested in the will for the damages they may sustain in consequence of such neglect.

SEC. 8. Any person named as executor in a will, though the will is not in his possession, may present his petition to the probate court which has jurisdiction, praying that the person in possession of the will may be required to produce it, that it may be admitted to probate, and that letters testamentary may be issued to him.

SEC. 9. Any person having an interest in the will may in like manner pre-

sent a petition, praying that it may be required to be produced and admitted to probate.

SEC. 10. If it be alleged in any petition that any will is in the possession of a third person, and the court shall be satisfied that the allegation is correct, an order shall be issued and served upon the person having possession of the will requiring him to produce it at a time to be named in the order.

SEC. 11. If he has possession of the will, and neglects or refuses to produce it in obedience to the order, he may, by warrant from the court, be committed to the jail of the county, and be kept in close confinement until he shall produce the will.

SEC. 12. Applications for the probate of a will or letters testamentary may be made to the probate judge out of term-time, and he may also, out of term-time, issue all necessary orders and warrants to enforce the production of any will.

SEC. 13. When any will shall have come into the possession of the probate court, the court shall appoint a time for proving it, which shall not be less than ten nor more than thirty days, and shall cause notice to be given thereof by publication, not less than once a week, in some newspaper, if there is one printed in the county; or, if not, by notices in writing, posted in three public places in the county.

SEC. 14. If the heirs of the testator reside in the county, the court shall also direct citations to be issued and served upon them, to appear and contest the probate of the will at the time appointed.

SEC. 15. If the will is presented by any other person than the one named as executor, or if it is presented by one of several persons named as executors in the will, citations shall also be issued and served upon such person or persons, if resident within the county.

SEC. 16. The court shall also direct subpœnas to be issued to the subscribing witnesses to the will, if they reside in the county.

SEC. 17. At the time appointed, or at any time to which the hearing may be continued, upon proof being made that notice has been given as required in the preceding sections, the court shall proceed to hear the testimony to prove the will.

SEC. 18. Any person interested may appear and contest the will. If it appear that there are minors who are interested, or persons residing out of the county, the court shall appoint some attorney to represent them.

SEC. 19. If no person shall appear to contest the probate of a will, the court may admit it to probate on the testimony of one of the subscribing witnesses only, if he shall testify that the will was executed in all particulars as required by law, and that the testator was of sound mind at the time of its execution.

SEC. 20. If any person appears and contests a will, he shall file a statement in writing of the grounds of his opposition.

SEC. 21. If the will is contested, all the subscribing witnesses who are present in the county and who are of sound mind must be produced and examined—and the death, absence, or insanity of any of them shall be satisfactorily proved to the court.

SEC. 22. If none of the subscribing witnesses reside in the county at the time appointed for proving the will, the court may admit the testimony of other witnesses to prove the sanity of the testator and the execution of the will; and, as evidence of the execution, it may admit proof of the handwriting of the testator and of the subscribing witnesses, or any of them.

SEC. 23. The testimony of each witness shall be reduced to writing and signed by him, and shall be deemed good evidence in any subsequent contests concerning the validity of the will or the sufficiency of the proof thereof, if the witness be dead or has permanently removed from this Territory.

SEC. 24. If the court shall be satisfied, upon the proof taken, that the will was duly executed, and that the testator at the time of its execution was of sound mind and not under restraint, a certificate of the proof, signed by the probate judge, and attested by the seal of the court, shall be attached to the will.

SEC. 25. The will and the certificate of the proof thereof, together with the testimony which has been taken, shall be filed by the clerk and recorded by him in a book to be provided for the purpose.

SEC. 26. The record of the will, and the exemplification by the clerk in whose custody it may be, shall be received in evidence and be as effectual in all cases as the original would be if proved.

SEC. 27. All wills which shall have been duly proved and allowed in any other of the United States, or in any foreign country, state, or territory, may be allowed and recorded in the probate court of any county in which the testator shall have left any estate, provided it has been executed in conformity with the laws of this Territory, or of such foreign country, state, or territory.

SEC. 28. When a copy of the will, and the probate thereof duly authenticated, shall be produced by the executor, or by any other person interested in the will, the court shall appoint a time of hearing, and a notice shall be given in the same manner as in the case of an original will for probate.

SEC. 29. If, on the hearing, it shall appear to the court that the instrument ought to be allowed as the will of the deceased, a copy shall be filed and recorded, and the will shall have the same force and effect as if it had been originally proved and allowed in the same court.

SEC. 30. When a will has been admitted to probate, any person interested may, at any time within one year after such probate, contest the same or the validity of the will. For that purpose, he shall file in the court before which the will was proved, a petition in writing containing his allegations against the validity of the will or against the sufficiency of the proof, and praying that the probate may be revoked.

SEC. 31. Upon the filing of the petition a citation shall be issued to the executors, who have taken upon them the execution of the will, or to the administrators, with the will annexed, and to all the legatees named in the will residing in the Territory, or to their guardians if any of them are minors, or their personal representatives if any of them are dead, requiring them to appear before the court on some day of a regular term therein specified, to show cause why the probate of the will should not be revoked.

SEC. 32. At the time appointed for showing cause, or at any time to which the hearing shall be continued, personal service of the citations having been made upon any person named therein, the court shall proceed to hear the proofs of the parties. If any devisees or legatees named in the will shall be minors and have no guardians, the court shall appoint some attorney to represent them.

SEC. 33. If, upon the hearing of the proofs of the parties, the court shall decide that the will is for any reason invalid, or that it is not sufficiently proved to have been the last will of the testator, the probate shall be annulled and revoked.

SEC. 34. Upon the revocation being made, the powers of the executor or administrator with the will annexed shall cease; but such executor or administrator shall not be liable for any act done in good faith previous to the revocation.

SEC. 35. The fees and expenses shall be paid by the party contesting the validity of the will or the probate, if the will or probate be confirmed. If the probate be revoked, the party who shall have resisted the revocation shall pay the costs and expenses of the proceedings out of the property of the deceased.

SEC. 36. If no person shall, within one year after the probate, contest the same, or the validity of a will, the probate of the will shall be conclusive; saving to infants, married women, and persons of unsound mind, a like period of one year after their respective disabilities are removed.

SEC. 37. Whenever any will shall be lost or destroyed by accident or design, the probate court shall have power to take proof of the execution and validity of the will, and to establish the same, notice to all persons interested having been first given, as prescribed in regard to proofs of wills in other cases. All the testimony given shall be reduced to writing, and signed by the witnesses.

SEC. 38. No will shall be allowed to be proved as a lost or destroyed will, unless the same shall be proved to have been in existence at the time of the death of the testator, or be shown to have been fraudulently destroyed in the lifetime of the testator, nor unless its provisions be clearly and distinctly proved by at least two credible witnesses.

SEC. 39. When any will shall be established, the provisions thereof shall be distinctly stated and certified by the probate judge, under his hand and the seal of his court; and the certificate, together with the testimony upon which it is founded, shall be recorded as other wills are required to be recorded, and letters testamentary or of administration, with the will

annexed, shall be issued thereon, in the same manner as upon wills produced and duly proved.

SEC. 40. If, before or during the pendency of an application to prove a lost or destroyed will, letters of administration be granted on the estate of the testator, or letters testamentary of any previous will of the testator be granted, the court shall have authority to restrain the administrators or executors so appointed, from any acts or proceedings which would be injurious to the legatees or devisees claiming under the lost or destroyed will.

Letters Testamentary and of Administration, and Bonds of Executors and Administrators.

SEC. 41. When any will shall have been proved and allowed, the probate court shall issue letters thereon to the persons named in the will as executors, who are competent to discharge the trust, and who shall appear and qualify.

SEC. 42. No person shall be deemed competent to serve as executor who, at the time the will is proved, shall be: First. Under the age of twenty-one years; or, second, who shall have been convicted of an infamous crime; or third, who, upon proof, shall be adjudged by the court incompetent to execute the duties of the trust by reason of drunkenness, improvidence, or want of understanding. If any such person be named as the sole executor, in any will, or if all the persons named as executors are incompetent, letters of administration, with the will annexed, shall be issued.

SEC. 43. Any person interested in a will may file objections in writing to the granting of letters testamentary to the persons named as executors, or any of them, and the objections shall be heard and determined by the court.

SEC. 44. When an unmarried woman, who shall have been appointed executrix, shall marry, her marriage shall extinguish her authority.

SEC. 45. No executor of an executor shall, as such, be authorized to administer on the estate of the first testator; but on the death of the sole or surviving executor of any last will, letters of administration, with the will annexed, of the estate of the first testator, left unadministered, shall be issued.

SEC. 46. When a person, under the age of twenty-one years, shall be named executor, letters of administration, with the will annexed, shall not be granted during the minority of the executor, unless there is another executor who shall accept the trust and qualify, in which case the executor who shall accept the trust and qualify shall have letters testamentary, and shall administer the estate until the minor shall arrive at full age, when he may be admitted as joint executor.

SEC. 47. When all the executors named shall not be appointed by the court, such as are appointed shall have the same authority to perform every act and discharge every trust required by the will, and their acts shall be as effectual for every purpose as if all were appointed and should act together.

SEC 48. Administrators, with the will annexed, shall have the same authority as the executor named in the will would have had, and their acts shall be as effectual for every purpose.

SEC. 49. Letters testamentary and of administration, with the will annexed, shall be signed by the clerk, and be under the seal of the court.

SEC. 50. Letters testamentary may be in substantially the following form:

TERRITORY OF ARIZONA, COUNTY OF .

The last will of A. B., deceased, a copy of which is hereto annexed, having been proved and recorded in the probate court of the county of ——————, C. D., who is named therein, is hereby appointed executor.

Witness: G. H., clerk of the probate court of the county of ——————, with the seal of the court affixed, the —— day of ——, A. D. 18—.

[*Seal.*] *By order of the court*, G. H., *clerk.*

SEC. 51. Letters of administration, with the will annexed, may be substantially in the following form:

TERRITORY OF ARIZONA, COUNTY OF .

The last will of A. B., deceased, a copy of which is hereto annexed, having been proved and recorded in the probate court of the county of ——————, and there being no executor named in the will (or, as the case may be), C. D. is hereby appointed administrator, with the will annexed.

Witness: G. H., clerk of the probate court of the county of ——————, with the seal of the court affixed, the —— day of ——, A.D. 18—.

[*Seal.*] *By order of the court*, G. H., *clerk.*

SEC. 52. Administration of the estate of a person dying intestate, shall be granted to some one or more of the persons hereinafter mentioned, and they shall be respectively entitled in the following order: First. The surviving husband or wife, or such person as he or she may request to have appointed; second, the children; third, the father or mother; fourth, the brothers; fifth, the sisters; sixth, the grandchildren; seventh, any other of the next of kin who would be entitled to share in the distribution of the estate; eighth, creditors; ninth, any person or persons legally competent.

SEC. 53. When there shall be several persons claiming and equally entitled to the administration, males shall be preferred to females, and relatives of the whole blood to those of half blood.

SEC. 54. When there are several persons equally entitled to the administration, the court may, in its discretion, grant letters to one or more of them.

SEC. 55. No person shall be entitled to letters of administration who shall be: First, under the age of twenty-one years; or, second, who shall

have been convicted of an infamous crime; or, third, who, upon proof, shall be adjudged by the court incompetent to execute the duties of the trust, by reason of drunkenness, improvidence, or want of understanding.

SEC. 56. When any unmarried woman, who shall have been appointed administratrix, shall marry, her marriage shall extinguish her authority.

SEC. 57. If any person entitled to administration shall be a minor, administration shall be granted to his or her guardian.

SEC. 58. Application for letters of administration shall be made by petition, in writing, signed by the applicant or his counsel, and filed by the clerk of the court. The petition must state the facts essential to give the court jurisdiction of the case.

SEC. 59. Letters of administration shall only be granted at a regular term of the court, or at a special term appointed by the judge for the hearing of the application.

SEC. 60. When any petition praying for letters of administration has been filed, the clerk shall give notice thereof, by causing notices to be posted in at least three public places in the county, one of which shall be at the place where the court is held. The notice shall state the name of the deceased, the name of the applicant, and the term of the court at which the application will be heard.

Such notice shall be given at least ten days before the hearing.

SEC. 61. Any person interested may contest the application, by filing a written opposition thereto, on the ground of the incompetency of the applicant; or may assert his own rights to the administration, and pray that letters be issued to himself.

SEC. 62. On the hearing, it being first proved that notice has been given according to law, the court shall proceed to hear the allegations and proof of the parties, and to order the issuance of letters of administration as the case may require.

SEC. 63. An entry in the minutes of the court that proof was made, that notice had been given according to law, shall be conclusive evidence of the fact of such notice.

SEC. 64. Letters of administration may be granted to any applicant, though it appears that there are other persons having better rights to the administration, when such persons fail to appear and claim the issuance of letters to themselves.

SEC. 65. Before letters of administration shall be granted on the estate of any person who is represented to have died intestate, the fact of his dying intestate shall be proved by the oath of the applicant, and the court may also examine any other person, concerning the time, place, and manner of the death, and whether or not the deceased left any will, and may compel any person to attend as a witness for that purpose.

SEC. 66. Administration may be granted to one or more competent persons, although not entitled to the same, at the request of the person enti-

tled to be joined with such person. The request shall be in writing, and shall be filed in the court.

SEC. 67. When letters of administration have been granted to any other person than the surviving husband or wife, the child, the father, mother, or the brother of the intestate, any one of them may obtain the revocation of the letters by presenting to the probate court a petition praying the revocation, and that letters of administration be issued to him or her.

SEC. 68. When any such petition is filed, the clerk shall issue a citation to the administrator to appear and answer the petition at the next regular term of the court, or at any special term that may be appointed by the judge.

SEC. 69. At the time appointed, the citation having been duly served and returned, the court shall proceed to hear the allegations and proofs of the parties; and if the right of the applicant is established, and the court shall deem it for the interest of the estate, and he or she be competent, letters of administration shall be granted to the applicant, and the letters of the former administrator be revoked.

SEC. 70. The surviving husband or wife, where letters of administration have been granted to a child, to the father, or to a brother of the intestate, or any of such relatives, when letters have been granted to any other of them, may assert his or her prior right, and obtain letters of administration, and have the letters before granted revoked, in the manner prescribed in the three preceding sections.

SEC. 71. Letters of administration shall be signed by the clerk, and be under the seal of the court, and may be in substantially the following form:—

THE TERRITORY OF ARIZONA, COUNTY OF .

C. D. is hereby appointed administrator of the estate of A. B., deceased. [Seal.] Witness, G. H., clerk of the probate court of the county of , with the seal of the court affixed, the day of , A.D. 18 .

By order of the court,

G. H., *Clerk.*

SEC. 72. Before letters testamentary or of administration shall be issued to the executor or administrator, he shall take and subscribe an oath or affirmation, before the probate judge or clerk, that he will perform according to law, the duties of executor or administrator.

SEC. 73. Every person to whom letters testamentary or of administration shall have been directed to issue, shall, before receiving the letters, execute a bond to the Territory of Arizona, with two or more sufficient sureties, to be approved by the probate judge. In form, the bond shall be joint and several, and the penalty shall not be less than twice the value of the personal property belonging to the estate, which value shall be ascertained by the probate judge, by the examination on oath of the party applying, and of any other persons he may think proper to examine. The probate judge shall require an additional bond, whenever the sale of any

real estate belonging to an estate is ordered by him. The bond shall be conditioned that the executor or administrator shall faithfully execute the duties of the trust according to law. He shall also require bond and sufficient surety for the annual rents, issues, and profits of all real estate in his charge, as such executor or administrator, to be approved by the probate judge.

SEC. 74. When two or more persons shall be appointed executors or administrators, the probate judge shall take a separate bond from each of them.

SEC. 75. The bond shall not be void upon the first recovery, but may be sued upon from time to time by any person aggrieved, in his own name, until the whole penalty is exhausted.

SEC. 76. In all cases where bonds are required by this chapter, the sureties must justify on oath, before the judge of some court having a seal, to the effect that they are householders or freeholders resident within this Territory, and that they are worth double the amount for which they become liable, over and above their debts; such justification shall be in writing, certified by the judge before whom taken, and attached to and filed with the bond. Whenever the penal sum of the bond amounts to more than five thousand dollars, sureties may be allowed to become liable for portions of said penal sum, making in the aggregate at least two sureties for the whole penal sum, or for each portion thereof.

SEC. 77. When it is expressly provided in the will of a testator that no bond shall be required of the executor, letters testamentary may issue without any bond having been given; but an executor to whom letters have been issued without bond may, at any time afterwards, whenever it may be shown from any cause to be necessary or proper, be required to appear and file a bond as in other cases.

SEC. 78. Whenever any person interested in any estate shall discover that the sureties of any executor or administrator have become, or are becoming insolvent, that they have removed, or are about to remove from the Territory, or that, from any other cause, the bond is insufficient, he may apply by petition to the probate judge, and require that further security be given.

SEC. 79. If the probate judge shall be satisfied that the matter requires investigation, a citation shall be issued to the executor or administrator, requiring him to appear, at a time and place to be therein specified, to show cause why he should not give further security. The citation shall be served personally on the executor or administrator, at least ten days before the return day. If he shall have absconded, or cannot be found, it may be served by leaving a copy of it at his last place of residence.

SEC. 80. On the return of the citation, or at such other time as the judge shall appoint, he shall proceed to hear the proofs and allegations of the parties. If it shall satisfactorily appear that the security is from any cause insufficient, he may make an order requiring the executor or administrator to give further security, or to file a new bond in the usual form, within a reasonable time, not exceeding ten days.

SEC. 81. If the executor or administrator neglect to comply with the

order within the time prescribed, the judge shall, by order, revoke his letters, and his authority shall thereupon cease.

SEC. 82. When a petition is presented, praying that an executor or administrator be required to give further security, and when it shall also be alleged on oath or affirmation that the executor or administrator is wasting the property of the estate, the judge may, by order, suspend his powers until the matter can be heard and determined.

SEC. 83. When it shall come to his knowledge that the bond of any executor or administrator is, from any cause, insufficient, it shall be the duty of the probate judge, without any application, to cause him to be cited to appear and show cause why he should not give further security, and to proceed thereon as upon the application of any person interested.

SEC. 84. When either or all of the sureties of any executor or administrator shall desire to be released from responsibility, on account of his future acts, they may make application to the probate judge for relief, and the judge shall cause a citation to the executor or administrator to be issued and served, requiring him to appear, at a time and place to be therein specified, and to give other security.

SEC. 85. If new sureties be given to the satisfaction of the judge, he may, thereupon, make an order that the surety or sureties who applied for relief shall not be liable, on their bond, for any subsequent act, default, or misconduct of the executor or administrator.

SEC. 86. If the executor or administrator neglect or refuse to give new sureties to the satisfaction of the judge, on the return of the citation or within such reasonable time as the judge shall allow, not exceeding five days, he shall by order revoke the letters granted.

SEC. 87. The applications, authorized by the nine preceding sections of this chapter, may be heard and determined out of term-time. All orders made therein shall be entered upon the minutes of the court.

SEC. 88. When there shall be a delay in granting letters testamentary or of administration from any cause, or when no application shall have been made for such letters, the probate judge may appoint a special administrator to collect and take charge of the estate of the deceased, and to exercise such other power as may be necessary for the preservation of the estate; or he may direct the public administrator of his county, if there be one, to take charge of the estate.

SEC. 89. The appointment may be made out of term-time, and without notice, and shall be made by entry upon the minutes of the court, which shall specify the powers to be exercised by the administrator. Upon such order being entered, and after the person appointed has given bond, the clerk shall issue letters of administration to such person, in conformity with the order.

SEC. 90. In making the appointment of a special administrator, the probate judge shall give preference to the person or persons entitled to letters testamentary or of administration. But no appeal shall be allowed from the appointment.

SEC. 91. Before any letter shall issue to any special administrator, he shall give bond in such sum as the probate judge may direct, with sureties to the satisfaction of said judge, conditioned for the faithful performance of his duties.

SEC. 92. The special administrator shall collect and preserve for the executor or administrator all the goods, chattels, and debts of the deceased, and for that purpose may commence and maintain suits as an administrator. He may sell such perishable estate as the probate court may order to be sold, and may exercise such other powers as may have been conferred upon him by his appointment; but in no case shall he be liable to an action by any creditor on a claim against the deceased.

SEC. 93. When letters testamentary or of administration on the estate of the deceased have been granted, the powers of the special administrator shall cease, and he shall forthwith deliver to the executor or administrator all the property and effects of the deceased in his hands; and the executor or administrator may be permitted to prosecute to final judgment any suit commenced by the special administrator.

SEC. 94. The special administrator shall also render an account on oath of his proceedings, in like manner as other administrators are required to do.

SEC. 95. Whenever an executor or administrator shall die, or his letters be revoked, and the circumstances of the estate require the immediate appointment of an administrator, the probate judge may appoint a special administrator, as provided in the preceding sections.

SEC. 96. In case any one of several executors or administrators, to whom letters shall have been granted, shall die, become lunatic, be convicted of an infamous offence, or otherwise become incapable of executing the trust, or in case the letters testamentary or of administration shall be revoked or annulled according to law, with respect to any one executor or administrator, the remaining executor or administrator shall proceed and complete the execution of the will or administration.

SEC. 97. If all such executors or administrators shall die or become incapable, or the power and authority of all of them shall be revoked according to law, the probate court shall issue letters of administration with the will annexed, or otherwise, to the widow or next of kin, or others, in the same manner as is directed in relation to original letters of administration. The administrators so appointed shall give bond in the like penalty, with like sureties and conditions as hereinafter required of administrators, and shall have the like power and authority.

SEC. 98. If after granting letters of administration on the ground of intestacy, a will of the deceased shall be duly proved and allowed by the court, the letters of administration shall be revoked, and the power of the administrator shall cease, and he shall render an account of his administration within such time as the court shall direct.

SEC. 99. In such case the executor of the will, or the administrator with the will annexed, shall be entitled to demand, sue for, and collect all the rights, goods, chattels, and effects of the deceased remaining unadministered, and may be admitted to prosecute to final judgment any suit commenced

by the administrator before the revocation of his letters of administration.

SEC. 100. Any executor or administrator may at any time, by writing filed in the probate court, resign his appointment: Provided, he shall first settle his accounts and deliver up all the estate to such person as may be appointed by the court.

SEC. 101. All acts of an executor or administrator, as such, before the revocation of his letters testamentary or of administration, shall be as valid to all intents and purposes as if such executor or administrator had continued lawfully to execute the duties of his trust.

SEC. 102. A transcript from the minutes of the court showing the appointment of any person as executor or administrator, together with the certificate of the clerk under his hand and the seal of his court that such person has given bond and been qualified, and that letters testamentary or of administration have been issued to him, and have not been revoked, shall have the same effect in evidence as the letters themselves.

SEC. 103. No probate judge shall admit to probate any will, or grant letters testamentary or of administration, in any case where he shall be interested as next of kin to the deceased, or as a legatee or devisee under the will, or when he shall be named as executor or trustee in the will, or shall be a witness thereto.

SEC. 104. When any probate judge, who would otherwise be authorized to act, shall be precluded from acting from the causes mentioned in the preceding section, or when he shall be in any manner interested, upon a representation and due proof thereof made to the probate judge of an adjoining county, such judge shall be vested with all the powers and authority of the proper probate judge, in relation to the proof of any will, and the granting of letters testamentary or of administration thereon, and the granting of letters of administration in the cases of intestacy, and shall retain jurisdiction as to all subsequent proceedings in regard to the estate.

Of the Inventory and Collection of the Effects of Deceased Persons.

SEC. 105. Every executor or administrator shall make and return to the court, at its first term after his appointment, a true inventory and appraisement of all the estate of the deceased which shall have come to his possession or knowledge.

SEC. 106. For the purpose of making the appraisement, the probate judge shall appoint three disinterested persons, any two of whom may act, and who shall be entitled to receive a reasonable compensation for their services, to be allowed by the court; their compensation as allowed shall be in the form of a bill of items of their services, which shall be sworn to by them and filed with the inventory, and which shall not exceed three dollars per day. If any part of the estate shall be in another county than that in which letters are issued, appraisers thereof may be appointed, either by the probate judge having jurisdiction of the case or by the probate judge of such county.

SEC. 107. Before proceeding to the execution of their duty, the appraisers, before any officer authorized to administer oaths, shall take and subscribe an oath, to be attached to the inventory, that they will truly, honestly, and impartially appraise the property which shall be exhibited to them according to the best of their knowledge and ability. They shall then proceed to estimate and appraise the property, and shall set down each article separately, with the value thereof in dollars and cents, in figures opposite to the articles respectively. The inventory shall contain all the estate of the deceased, real and personal, a statement of all debts, partnerships, and other interests, bonds, mortgages, notes, and other securities for the payment of money belonging to the deceased, specifying the name of the debtor in each security, the date, the sum originally payable, the endorsements thereon, if any, with their dates, and the sum which, in the judgment of the appraiser, may be collectable on each debt, interest, or security.

SEC. 108. The inventory shall also contain an account of all moneys belonging to the deceased, which shall have come to the hands of the executor or administrator, and if more shall have come to his hands, the fact shall be so stated in the inventory.

SEC. 109. The naming any person executor in a will, shall not operate as a discharge from any just claim which the testator had against the executor, but the claim shall be included in the inventory, and the executor shall be liable for the same, as for so much money in his hands at the time the debt or demand becomes due.

SEC. 110. The discharge or bequest in a will of any debt or demand of the testator, against any executor named in his will, or against any other person, shall not be valid against the creditors of the deceased, but shall be construed only as a specific bequest of such debt or demand; and the amount thereof shall be included in the inventory, and shall, if necessary, be applied in the payment of his debts. If not necessary for that purpose, it shall be paid in the same manner and proportion as other specific legacies.

SEC. 111. The inventory shall be signed by the appraisers, and the executor or administrator shall take and subscribe an oath before the probate judge, or the clerk of the court, that the inventory contains a true statement of all the estate of the deceased which has come to his knowledge and possession, and particularly of all money belonging to the deceased, and of all just claims of the deceased against the executor or administrator. The oath shall be endorsed upon, or annexed to, the inventory.

SEC. 112. If any executor or administrator shall neglect or refuse to return the inventory within the time prescribed, or within such further time not exceeding two months, as the court shall for reasonable cause allow, the court shall revoke the letters testamentary or of administration, and the executor or administrator shall be liable on his bond for any injury sustained by the estate by his neglect.

SEC. 113. Whenever property not mentioned in any inventory that shall have been made, shall come to the possession or knowledge of an executor or administrator, he shall cause the same to be appraised in the manner prescribed in this chapter, and an inventory to be returned within two

months after the discovery thereof; and the making of such inventory may be enforced after notice by attachment or removal from office.

SEC. 114. The executor or administrator shall have a right to the possession of all the real as well as personal estate of the deceased, and may receive the rents and profits of the real estate, until the estate shall be settled, or until delivered over by order of the probate court to the heirs or devisees, and shall keep in good tenantable repair all houses, buildings, and fixtures thereon which are under his control.

SEC. 115. The personal estate of the deceased, which shall come into the hands of the executor or administrator, shall be first chargeable with the payment of the debts and expenses, and if the goods, chattels, rights, and credits, in the hands of the executor or administrator, shall not be sufficient to pay the debts of deceased and the expenses of administration and the allowances to the family of the deceased, the whole of the real estate may be sold for that purpose by the executor or administrator, in the manner prescribed by this chapter.

SEC. 116. If any person, before the granting of letters testamentary or of administration, shall embezzle or alienate any of the moneys, goods, chattels, or effects of any deceased person, he shall stand chargeable and be liable to the action of the executor or administrator of the estate for double the value of the property so embezzled or alienated, to be recovered for the benefit of the estate.

SEC. 117. If any executor or administrator, heir, legatee, creditor, or other person interested in the estate of any deceased person, shall complain to the probate judge, on oath, that any person is suspected to have concealed, embezzled, smuggled, conveyed away, or disposed of any moneys, goods, or chattels of the deceased; or that he has in his possession or knowledge any deeds, conveyances, lands, contracts, or other writings, which contain evidences of, or tend to disclose the right, title, interest, or claim of the deceased to any real or personal estate, or any claim or demand, or any last will of the deceased, the said judge may cite such person to appear before the probate court, and may examine him on oath upon the matter of such complaint. If such person be not in the county where letters have been granted, he may be cited and examined either before the probate court of the county where he may be found, or before the court issuing the order or citation. But if in the latter case he appear and be found innocent, his necessary expenses shall be allowed him out of the estate.

SEC. 118. If the person so cited refuse to appear and submit to such examination, or to answer such interrogatories as may be put to him, touching the matter of such complaint, the court may, by warrant for that purpose, commit him to the county jail, there to remain in close custody until he shall submit to the order of the court; and all such interrogatories and answers shall be in writing, and shall be signed by the party examined, and filed in the probate court.

SEC. 119. The probate judge, upon the complaint, on oath, of any executor or administrator, may cite any person who shall have been entrusted with any part of the estate of the deceased person, to appear before such court, and may require such person to render a full account on

oath of any moneys, goods, chattels, bonds, accounts, or other papers belonging to the estate, which shall have come to his possession in trust for the executor or administrator, and of his proceedings thereon; and if the person so cited shall refuse to appear and answer such account, the court may proceed against him as provided in the preceding section.

Of the Provision for the Support of the Family.

SEC. 120. When a person shall die, leaving a widow or minor child or children, the widow, child, or children shall, until letters have been granted, and the inventory has been returned, be entitled to remain in possession of the homestead and of all the wearing apparel of the family, and of all the household furniture of the deceased, and shall also be entitled to a reasonable provision for their support, to be allowed by the probate judge.

SEC. 121. Upon the return of the inventory, the court shall set apart, for the use of the widow or minor child or children, all property which is by law exempt from execution, or so much of such property as may have belonged to the deceased.

SEC. 122. If the whole property exempt by law be not included in the inventory, and if the amount set apart be insufficient for the support of the widow and child or children, the probate court shall make such reasonable allowances out of the estate as shall be necessary for the maintenance of the family, according to their circumstances, during the progress of the settlement of the estate; which, in case of an insolvent estate, shall not be longer than one year after granting letters of administration.

SEC. 123. Any allowances made by the court, in accordance with the provisions of the preceding section, shall be paid by the administrator in preference to all other charges, except funeral charges and expenses of administration.

SEC. 124. The following shall be set apart for the use of the widow or minor child or children, and shall not be subject to administration: First, all spinning-wheels, weaving-looms, and stoves put up or kept for use; second, the family Bible, family pictures, and school-books and library, not exceeding in value two hundred dollars; third, all goats or sheep to the number of twenty, with their fleeces, and the yarn or cloth manufactured from the same; two cows, five swine, with the necessary food for them for six months; fourth, all wearing apparel of the widow and children, and all household goods, furniture, and utensils not exceeding in value seven hundred and fifty dollars; fifth, the homestead, consisting of any quantity of land not exceeding twenty acres, and the dwelling-house thereon with its appurtenances, not being included in any incorporated town or city; or instead thereof, a quantity of land not exceeding one lot in any incorporated town or city, and the dwelling-house thereon and its appurtenances, to be selected by the widow, or if there be no widow, to be designated by the probate judge, and not to exceed in any case more than five thousand dollars in value.

SEC. 125. When property shall have been set apart for the use of the family, in accordance with the provisions of this chapter, if the deceased shall have left a widow, and no minor child, such property shall be the property

of the widow. If he shall have left also a minor child or children, the one-half of such property shall belong to the widow, and the remainder to the child, or in equal shares to the children, if there be more than one. If there be no widow, the whole shall belong to the minor child or children.

SEC. 126. If, on the return of the inventory of any intestate estate, it shall appear that the value of the whole estate does not exceed the sum of five hundred dollars, the probate court shall, by a decree for that purpose, assign, for the use and support of the widow and minor children of the intestate, or for the support of the minor child or children, if there be no widow, the whole of the estate after the payment of the funeral charges and expenses of the administration, and there shall be no further proceedings in the administration, unless further estate be discovered.

SEC. 127. If the widow has a maintenance derived from her own property equal to the portion set apart to her by the one hundred and twenty-fourth and one hundred and twenty-fifth sections of this chapter, the whole property so set apart shall go to the minor children.

Of Claims against the Estate.

SEC. 128. Every executor or administrator shall, immediately after his appointment, cause to be published in some newspaper printed in the county, if there be one, if not, then in such newspaper as may be designated by the court, a notice to the creditors of the deceased, requiring all persons having claims against the deceased to exhibit them with the necessary vouchers within one year after the date of the notice, to such executor or administrator, at the place of his residence or transaction of business, to be specified in the notice. Such notice shall be published as often as the judge may deem necessary, but not less than four insertions within not less than four weeks from the first insertion.

SEC. 129. After the notice shall have been published, a copy thereof, together with an affidavit attached thereto, of the publisher or printer of the paper in which the same was published, shall be filed by the executor or administrator.

SEC. 130. If a claim be not presented within one year after the first publication of the notice, it shall be barred for ever; Provided, if it be not then due, or, if it be contingent, it may be presented within one year after it shall become due or absolute.

SEC. 131. Every claim presented to the administrator shall be supported by the affidavit of the claimant that the amount is justly due, that no payments have been made thereon, and that there are no offsets to the same to the knowledge of the claimant. The oath may be taken before any officer authorized to administer oaths. The executor or administrator may also require satisfactory vouchers to be produced in support of the claim.

SEC. 132. When a claim, accompanied by the affidavit required in the preceding section, has been presented to the executor or administrator, he shall endorse thereon his allowance or rejection, with the day and date thereof. If he allow the claim, it shall be presented to the probate judge

for his approval, who shall in the same manner endorse upon it his allowance or rejection.

SEC. 133. Every claim which has been allowed by the executor or administrator shall be filed in the probate court, and be ranked among the acknowledged debts of the estate, to be paid in due course of administration.

SEC. 134. When a claim is rejected either by the executor or administrator, or the probate judge, the holder shall bring suit in the proper court against the executor or administrator, within three months after date of its rejection, if it be then due, or within three months after it becomes due; otherwise the claim shall be for ever barred.

SEC. 135. No claim shall be allowed by the executor or administrator, or by the probate judge, which is barred by the statute of limitations.

SEC. 136. No holder of any claim against an estate shall maintain any action thereon, unless the claim shall have been first presented to the executor or administrator.

SEC. 137. The time during which there shall be a vacancy in the administration shall not be included in any limitation herein prescribed.

SEC. 138. If an action be pending against the testator or intestate, at the time of his death, the plaintiff shall in like manner present his claim to his executor and administrator for allowance or rejection, authenticated as required in other cases, and no recovery shall be had in the action, unless proof be made of the presentment.

SEC. 139. Whenever any claim shall be presented to any executor or administrator, or to the probate judge, and he shall be willing to allow the same in part, he shall state in his endorsement the amount he is willing to allow. If the creditor refuse to accept the amount allowed in satisfaction of his claim, he shall recover no costs in any action which he may bring against the executor or administrator, unless he shall recover a greater amount than that offered to be allowed.

SEC. 140. The effect of any judgment rendered against any executor or administrator, upon any claim for money against the estate of his testator or intestate, shall be only to establish the claim in the same manner as if it had been allowed by the executor or administrator and the probate judge, and the judgment shall be that the executor or administrator pay in due course of administration the amount ascertained to be due. A certified transcript of the judgment shall be filed in the probate court. No execution shall issue upon such judgment, nor shall it create any lien upon the property of the estate, or give to the judgment creditor any priority of payment.

SEC. 141. When any judgment has been rendered against the testator or intestate in his lifetime, no execution shall issue thereon after his death; but it shall be presented to the executor or administrator as any other claim, but need not be supported by the affidavit of the claimant; and if justly due and unsatisfied, shall be paid in due course of administration: Provided, however, that if the execution shall have been levied upon any property of the deceased, the same may be sold for the satisfaction thereof, and the

officer making the sale shall account to the executor or administrator for any surplus in his hands.

SEC. 142. If the executor or administrator doubt the correctness of any claim presented to him, he may enter into an agreement in writing with the claimant to refer the matter in controversy to some disinterested person to be approved by the probate judge. Upon filing the agreement and approval of the probate judge in the office of the clerk of the district court for the county in which the letters testamentary or of administration were granted, the clerk shall, either in vacation or in term, enter a rule, referring the matter in controversy to the person so selected.

SEC. 143. The referee shall thereupon proceed to hear and determine the matter, and make his report thereon to the court in which the rule for his appointment shall have been entered. The same proceedings shall be had in all respects, the referee shall have the same powers, be entitled to the same compensation, and subject to the same control as if the reference had been made in an action in which such court might by law direct a reference. The court may set aside the referee or appoint another in his place, or may set aside or confirm the report, and adjudge costs as in actions against executors and administrators, and the judgment of the court thereon shall be valid and effectual in all respects, as if the same had been rendered in a suit commenced by ordinary process.

SEC. 144. When a judgment has been recovered with costs against any executor or administrator, the executor or administrator shall be individually liable for the costs, but they shall be allowed him in his administration accounts, unless it shall appear that the suit or proceeding in which the costs were taxed shall have been prosecuted or resisted without just cause.

SEC. 145. If the executor or administrator is himself a creditor of the testator or intestate, his claim, duly authenticated by affidavits, shall be presented for allowance or rejection to the probate judge, and its allowance by the judge shall be sufficient evidence of its correctness.

SEC. 146. If any executor or administrator shall neglect for two months after his appointment to give notice to creditors, as prescribed by this chapter, it shall be the duty of the court to revoke his letters.

SEC. 147. At the same term at which he is required to return his inventory, the executor or administrator shall also return a statement of all claims against the estate which shall have been presented to him, when required by the court, and from term to term thereafter shall present a statement of claims subsequently presented to him. In all such statements he shall designate the names of the creditors, the nature of each claim, when it became due or will become due, and whether it was allowed or rejected by him.

Sales of Property by Executors or Administrators.

SEC. 148. No sale of any property of an estate shall be valid unless made under an order of the probate court.

SEC. 149. All applications for orders of sale shall be by petition in writ-

ing, in which shall be set forth the facts showing the sale to be necessary, and upon the hearing any person interested in the estate may file his written objections, which shall be heard and determined.

SEC. 150. At the term of the court to which the inventory is returned, the executor or administrator shall apply for an order to sell the perishable property of the estate, and so much other property as may be necessary to be sold to pay the allowance made to the family of the deceased. If claims against the estate have been allowed, and a sale of property shall be necessary for their payment, or of the expenses of the administration, he shall also apply for an order to sell so much of the personal property as shall be necessary. He shall make a similar application, either in vacation or term, giving ten days' previous notice in a newspaper, or by the usual public posting from time to time, so long as any personal property remains in his hands, and a sale is necessary to pay any demands against the estate.

SEC. 151. If it appear that a sale is necessary, the court shall order it to be made. In making such sales the court shall order such articles as are not necessary for the support and subsistence of the family of the deceased, or are not specially bequeathed, to be first sold. Articles so bequeathed shall not be sold until the residue of the personal estate has been applied to the payment of the debts.

SEC. 152. Sales of personal property shall be made at public auction, and after public notice given for at least ten days. The sale may be made either at the court-house door, at the residence of the deceased, or at some other public place.

SEC. 153. The notice shall be given by notices posted in the public places in the county, or by publication in a newspaper, if the judge shall so order, in which shall be specified the time and place of the sale.

SEC. 154. When the personal estate in the hands of the executor or administrator shall be insufficient to pay the allowance to the family and all the debts and charges of the administration, the executor or administrator may sell the real estate for that purpose upon the order of the probate judge.

SEC. 155. To obtain such order he shall present a petition to the probate court, setting forth the amount of personal estate that has come to his hands, and how much thereof, if any, remains undisposed of, the debts outstanding against the deceased, as far as the same can be ascertained, a description of all the real estate of which the testator or intestate died seized, and the condition and value of the respective portions and lots, the names and ages of the devisees, if any, and of the heirs of the deceased, which petition shall be verified by the oath of the party presenting the same.

SEC. 156. If it shall appear by such petition that there is not sufficient personal estate in the hands of the executor or administrator to pay the allowance to the family, the debts outstanding against the deceased, and the expenses of administration, and that it is necessary to sell the whole or some portion of the real estate for the payment of such debts, the probate judge shall thereupon make an order directing all persons interested to appear before him at a time and place specified, not less than four nor more than ten weeks from the time of making such order, to show cause

why an order should not be granted to the executor or administrator to sell so much of the real estate of the deceased as shall be necessary to pay such debts.

SEC. 157. A copy of such order to show cause shall be personally served on all persons interested in the estate at least ten days before the time appointed for hearing the petition, or shall be published at least four weeks in such newspaper as the court shall order: Provided, however, if all persons interested in the estate shall signify in writing their assent to such sale, the notice may be dispensed with.

SEC. 158. The probate judge, at the time and place appointed in such order, or at such other time as the hearing may be adjourned to, upon proof of the due service or publication of a copy of the order, or upon filing the consent in writing to such sale, of all parties interested, shall proceed to the hearing of such petition; and if such consent be not filed, shall hear and examine the allegations and proofs of the petitioners, and of all persons interested in the estate who may oppose the application.

SEC. 159. If any of the devisees or heirs of the deceased are minors, and have a general guardian in the county, a copy of the order shall be served upon the guardian. If they have no such guardian, the court shall, before proceeding to act upon the petition, appoint some disinterested person their guardian, for the sole purpose of appearing for them and taking care of their interests in the proceedings.

SEC. 160. The executor or administrator may be examined on oath, and witnesses may be examined by either party, and process to compel their attendance and testimony may be issued by the probate judge in the same manner and with like effect as in other causes.

SEC. 161. If it shall appear to the court that it is necessary to sell a part of the real estate, and that by a sale of such part the residue of the estate, or some specific part or a piece thereof, would be greatly injured, the court may authorize the sale of the whole estate, or of such part thereof as may be judged necessary and most for the interests of all concerned.

SEC. 162. If the probate judge shall be satisfied, after a full hearing upon the petition, and an examination of the proofs and allegations of the parties interested, that a sale of the whole or some portion of the real estate is necessary for the payment of the allowance of the family and all valid claims against the deceased, and charges of administration, or if such sale be assented to by all the persons interested, he shall make an order of sale, authorizing the executor or administrator to sell the whole, or so much and such parts of the real estate described in the petition, as he shall judge necessary or beneficial.

SEC. 163. The order shall specify the lands to be sold and the terms of sale, which may be either for cash or on a credit not exceeding six months, as the court may direct. If it appears that any part of such real estate has been devised, and not charged in such devise with the payment of debts, the court shall order that part descended to heirs to be sold, before that so devised.

SEC. 164. If the executor or administrator shall neglect to apply for an

order of sale whenever it may be necessary, any person interested in the estate may make application therefor, in the same manner as the executor or administrator, and notice thereof shall be given to the executor or administrator before the hearing.

SEC. 165. Upon the making of such order a certified copy of the order of sale shall be delivered by the court to the executor or administrator, who shall be thereupon authorized to sell the real estate as directed.

SEC. 166. When a sale is ordered, notice of the time and place of holding the same shall be posted up in three of the most public places in the county in which the land is situated, and shall be published in a newspaper, if there be one printed in the same county, and if there be none, then in such paper as the court may direct, for three weeks next before such sale, in which notice the lands and tenements to be sold shall be described with common certainty.

SEC. 167. Such sale shall be in the county where the lands are situated, at public auction, between the hours of nine o'clock in the morning and the setting of the sun the same day.

SEC. 168. The executor or administrator shall, when the sale is made upon a credit, take the note or notes of the purchaser for the purchase money, with a mortgage on the property to secure their payments.

SEC. 169. The executor or administrator making any sale of any real estate, shall, at the next term of the court thereafter, make a return of his proceedings to the probate judge, who shall examine the same, and if he shall be of opinion that the proceedings were unfair, or that the sum bid is disproportionate to the value, and that a sum exceeding such bid at least ten per cent., exclusive of the expenses of a new sale, may be obtained, he shall vacate such sale and direct another to be had, of which notice shall be given, and the sale shall be in all respects conducted as if no previous sale had taken place.

SEC. 170. When the return of the sale is made, any person interested in the estate may file written objections to the confirmation of the sale, and may be heard, and may produce witnesses in support of his objections.

SEC. 171. If it appear to the court that the sale was legally made and fairly conducted, and that the sum bid was not disproportionate to the value of the property sold, or if disproportionate, that a greater sum as above specified cannot be obtained, the court shall make an order confirming the sale, and directing conveyances to be executed, and such sale from that time shall be confirmed and valid.

SEC. 172. Such conveyances shall thereupon be executed to the purchaser by the executor or administrators. They shall contain and set forth at large the original order authorizing a sale, and the order confirming the same, and directing the conveyance; and they shall be deemed to convey all the estate, rights, and interest in the premises of the testator or intestate, at the time of his death.

SEC. 173. Before any order is entered confirming the sale, it shall be proved to the satisfaction of the court that notice was given of the sale as

herein prescribed, and the order of confirmation shall state that such proof was made.

SEC. 174. If, at the time appointed for the same, the executor or administrator shall deem it for the interest of all persons concerned therein that the sale shall be postponed, he may adjourn the same from time to time, not exceeding in all three months.

SEC. 175. In case of the adjournment, notice thereof shall be given by a public declaration at the time and place first appointed for the sale, and if the adjournment be for more than one day, further notice shall be given by printing or publishing the same or both, as the time and circumstances may admit.

SEC. 176. When a testator shall have given any legacy by will that is effectual to pass or charge real estate, and his goods, chattels, rights, and credits shall be insufficient to pay a legacy, together with his debts and the charges of administration, the executor or administrator, with the will annexed, may obtain an order to sell his real estate for that purpose in the same manner and upon the same terms and conditions as are prescribed in this chapter in case of a sale for the payment of debts.

SEC. 177. If the testator shall make provision by his will, or designate the estate to be appropriated for the payment of his debts, the expenses of administration or family expenses, they shall be paid according to the provisions of the will, and out of the estate thus appropriated, so far as the same may be sufficient.

SEC. 178. When such provision has been made, or any property directed by the will to be sold, the executor or administrator, with the will annexed, may proceed to sell without the order of the probate court, but he shall be bound as an administrator to give notice of the sale, and to return accounts thereof to the court, and to proceed in making the sale in all respects as if it were made under the order of the court, unless there are special directions given in the will, in which case he shall be governed by such directions.

SEC. 179. If the provisions made by the will, or the estate appropriated, be not sufficient to pay the debts and expenses of administration and family expenses, such part of the estate as shall not have been disposed of by the will, if any, shall be appropriated for that purpose according to the provisions of this chapter.

SEC. 180. The estate, real and personal, given by will to any legatees or devisees, shall be held liable to the payment of debts, expenses of administration, and family expenses, in proportion to the value or amount of the several devises or legacies, except that specific devises or legacies may be exempted, if it shall appear to the court necessary to carry into effect the intentions of the testator, if there shall be other sufficient estate.

SEC. 181. When the estate given by any will has been sold for the payment of debts and expenses, all the devisees and legatees shall be liable to contribute according to their respective interests, to any devisee or legatee from whom the estate devised to him may have been taken for the payment of debts or expenses; and the probate court, when distribution is

made, shall, by decree for that purpose, settle the amount of the several liabilities, and decree how much each person shall contribute.

SEC. 182. If a deceased person at the time of his death was possessed of a contract for the purchase of lands, his interest in such lands and under such contract may be sold on the application of his executor or administrator, in the same manner as if he had died seized of such land, and the same proceedings may be had for that purpose as are prescribed in this chapter in respect to lands of which he died seized, except as hereinafter provided.

SEC. 183. Such sale shall be made subject to all payments that may thereafter become due on such contracts, and if there be any such payments thereafter to become due, such sale shall not be confirmed by the probate judge, until the purchasers shall execute a bond to the executor and administrator for his benefit and indemnity, and for the benefit and indemnity of the persons entitled to the interest of the deceased in the lands so contracted for, in double the whole amount of payments thereafter to become due on such contract, with such sureties as the probate judge shall approve.

SEC. 184. Such bond shall be conditioned that the purchaser will make all payments for such land that shall become due after the date of such sale, and will fully indemnify the executor or administrator, and the person so entitled, against all demands, costs, charges, and expenses, by reason of any covenant or agreement contained in such contract; but if there be no payments thereafter to become due on such contract, no bond shall be required by the purchaser.

SEC. 185. Upon the confirmation of such sale, the executor or administrator shall execute to the purchaser an assignment of the contract, which assignment shall vest in the purchaser, his heirs and assigns, all the right, title, and interest of the persons entitled to the interest of the deceased in the lands sold at the time of the sale, and such purchaser shall have the same rights and remedies against the vendor of such land as the deceased would have had if he was living.

SEC. 186. When any sale is made by an executor or administrator, pursuant to the provisions of this chapter, of land subject to any mortgage or lien, which is a valid claim against the estate of the deceased, the purchase money shall be applied, after paying the necessary expenses of the sale, first to the payment and satisfaction of the mortgage, and the residue in due course of administration.

SEC. 187. In all cases in which land is sold by an executor or administrator, the necessary expenses of the sale shall be first paid out of the proceeds.

SEC. 188. If there shall be any neglect or misconduct in the proceedings of the executor in relation to any sale by which any person interested in the estate shall suffer damages, the party aggrieved may recover the same in a suit upon the bond of the executor or administrator, or otherwise, as the case may require.

SEC. 189. Any executor or administrator who shall fraudulently sell any

real estate of his testator or intestate, contrary to the provisions of this chapter, shall be liable in double the value of the land sold, as damages, to be recovered in an action by the person having an estate of inheritance therein.

SEC. 190. No action for the recovery of any estate, sold by an executor or administrator under the provisions of this chapter, shall be maintained by any heir or other person claiming under the deceased testator or intestate, unless it be commenced within three years next after the sale.

SEC. 191. The preceding section shall not apply to minors or others under any legal disability to sue at the time when the right of action shall first accrue; but all such persons may commence such action at any time within three years after the removal of the disability.

SEC. 192. Whenever a sale has been made by an executor or administrator of any property of the estate, real or personal, it shall be his duty to return to the probate court, at its next term thereafter, an account of sales verified by his affidavit. If he neglects to make such return he may be punished by attachment, or his letters may be revoked, ten days' notice having been first given him to appear and show cause why such attachment should not issue, or such revocation should not be made.

SEC. 193. No executor or administrator shall directly or indirectly purchase any property of the estate by him represented.

Of the Powers and Duties of the Executor and Administrator, and of the Management of the Estate.

SEC. 194. The executor or administrator shall take into his possession all the estate of the deceased, real and personal, and shall collect all debts due to the deceased.

SEC. 195. Actions for the recovery of any property, real or personal, or for the possession thereof, and all actions founded upon contracts, may be maintained by and against executors and administrators, in all cases in which the same might have been maintained by or against their respective testators or intestates.

SEC. 196. Executors and administrators may maintain action against any person who shall have wasted, destroyed, taken, or carried away, or converted to his own use, the goods of their testator or intestate in his lifetime. They may also maintain actions for trespass committed on the real estate of the deceased in his lifetime.

SEC. 197. Any person, or his personal representative, shall have action against the executor or administrator of any testator or intestate, who in his lifetime shall have wasted, destroyed, taken, or carried away, or converted to his own use, the goods or chattels of any such person, or committed any trespass on the real estate of such person.

SEC. 198. When there was any partnership existing between the testator or intestate at the time of his death, and any other person, the surviving partner shall have the right to continue in possession of the effects of the partnership and to settle its business, but the interest of the deceased shall

be included in the inventory, and appraised as other property. The surviving partner shall proceed to settle the affairs of the partnership without delay, and shall account with the executor or administrator, and pay over such balances as may from time to time be payable to him in right of his testator or intestate. Upon the application of the executor or administrator, the probate judge may, whenever it may appear necessary, order the surviving partner to render an account, and in case of neglect or refusal, may, after notice, compel it by attachment. And the executor or administrator may maintain against him any action which his testator or intestate could have maintained.

SEC. 199. Any administrator may in his own name, for the use and benefit of all parties interested in the estate, maintain actions on the bond of an executor, or of any former administrator of the same estate.

SEC. 200. In actions brought by or against executors, it shall not be necessary to join those as parties to whom letters shall have been issued, and who have not qualified.

SEC. 201. Whenever a debtor of a deceased person shall be unable to pay all his debts, the executor or administrator, with the approbation of the probate judge, may compound with him and give him a discharge, upon receiving a fair and just dividend of his effects.

SEC. 202. When there shall be a deficiency of assets in the hands of an executor or administrator, and when the deceased shall in his lifetime have conveyed any real estate or any rights or interests therein, with intent to defraud his creditors, or to avoid any right, debt, or duty of any person, or shall have so conveyed such estate, that by law the deeds or conveyances are void as against creditors, the executor or administrator may, and it shall be his duty to commence and prosecute to final judgment any proper action for the recovery of the same; and may recover for the benefit of the creditors all such real estate so fraudulently conveyed, and may also, for the benefit of the creditors, sue and recover all goods, chattels, rights, or credits which may have been so fraudulently conveyed by the deceased in his lifetime, whatever may have been the manner of such fraudulent conveyance.

SEC. 203. No executor or administrator shall be bound to sue for such estate as mentioned in the preceding section, for the benefit of the creditors, unless on application of creditors of the deceased; nor unless the creditors making the application shall pay such part of the costs and expenses, or give such security to the executor or administrator thereof as the probate judge shall direct.

SEC. 204. All the real estate so recovered shall be sold for the payment of debts, in the same manner as if the deceased had died seized thereof, upon obtaining an order therefor from the probate court, and the proceeds of all goods, chattels, rights, and credits so recovered shall be appropriated in payment of the debts of the deceased, in the same manner as other property in the hands of the executor or administrator.

Of the Conveyance of Real Estate by Executors and Administrators in certain Cases.

SEC. 205. When any person who is bound by contract, in writing, to

convey any real estate, shall die before making the conveyance, the probate court may make a decree authorizing and directing the executor or administrator to convey such real estate to the person entitled thereto, in all cases where such deceased person, if living, might be compelled to make such conveyance.

SEC. 206. On the presentation of a petition by any person claiming to be entitled to such conveyance from any executor or administrator, setting forth the facts upon which such claim is predicated, the probate judge shall appoint a time and place for hearing such petition, which shall be at a regular term of the court; and shall order notice of the pendency thereof, and of the time and place of hearing, to be published at least four weeks before such hearing, in such newspaper in this Territory as he may designate.

SEC. 207. At the time and place appointed for such hearing, or at such other time as the same may be adjourned to, upon proof by affidavit of the due publication of the notice, the court shall proceed to a hearing, and all persons interested in the estate may appear and defend such petition, by filing their objections in writing, and the court may examine on oath the petitioners, and all who may be produced before him for that purpose.

SEC. 208. After a full hearing upon such petition and objections, and examination of the facts and circumstances of the claim, if the probate judge is satisfied that the petitioner is entitled to a conveyance of the real estate described in his petition, he shall make a decree authorizing and directing the executor or administrator to execute a conveyance thereof to the petitioner.

SEC. 209. Any person interested may appeal from such decree to the district court of the same county, as in other cases; but if no appeal be taken from such decree within the time limited therefor by law, or if such decree be affirmed on appeal, it shall be the duty of the executor or administrator to execute the conveyance according to the directions contained in the decree, and a certified copy thereof shall be recorded with the deed in the office of the recorder in the county where the lands lie, and shall be evidence of the correctness of the proceedings, and of the authority of the executor or administrator to make the conveyance.

SEC. 210. If, upon a hearing in the probate court, as hereinbefore provided, the probate judge shall doubt the right of the petitioner to have a specific performance of the contract, he shall dismiss the petition without prejudice to the rights of the petitioner, who may at any time within six months thereafter proceed in the district court to enforce a specific performance.

SEC. 211. Every conveyance made in pursuance of a decree of the probate court, as provided in this chapter, shall be effectual to pass the estate contracted for as fully as if the contracting party himself was still living and then executed the conveyance.

SEC. 212. A copy of the decree for a conveyance made by the probate court, and duly certified and recorded in the office of the recorder of the county where the lands lie, shall give the person entitled to the conveyance a right to the possession of the lands contracted for, and to hold the same

according to the terms of the intended conveyance, in like manner as if they had been conveyed in pursuance of the decree.

SEC. 213. The recording of any decree as provided in the preceding section, shall not prevent the court making such decree from enforcing the same by other process.

SEC. 214. If the person to whom the conveyance was to be made shall die before the commencement of the proceedings, according to the provisions of this chapter, or before the completion of the conveyance, any person who would have been entitled to the estate under him as heir, devisee, or otherwise, in case the conveyance had been made according to the terms of the contract, or the executor or administrator of such deceased person, for the benefit of the persons so entitled, may commence such proceedings, or may prosecute the same if already commenced, and the conveyance shall be so made as to vest the estate in the same persons who would have been entitled to it, or in the executor or administrator for their benefit.

Of Accounts to be rendered by Executors and Administrators, and of the Payment of Debts.

SEC. 215. No executor or administrator shall be chargeable upon any special promise to answer damages or to pay the debts of the testator or intestate out of his own estate, unless the agreement for that purpose, or some memorandum or note thereof, is in writing and signed by such executor or administrator, or by some other person by him thereunto specially authorized.

SEC. 216. Every executor and administrator shall be chargeable in his account with the whole of the estate of the deceased, which may come to his possession at the value of the appraisement contained in the inventory, except as provided in the following sections, and with all the interest, profit, and income of the estate.

SEC. 217. He shall not make profit by the increase, nor suffer loss by the decrease or destruction without his fault, of any part of the estate. He shall account for the excess when he shall sell any part of the estate for more than the appraisement, and if any shall be sold for less than the appraisement, he shall not be responsible for the loss if the sale has been justly made.

SEC. 218. No executor or administrator shall be accountable for any debts due to the deceased, if it shall appear that they remain uncollected without his fault.

SEC. 219. He shall be allowed all necessary expenses in the care, management, and settlement of the estate, and for his services such fees as the law provides; but when the deceased shall, by his will, make some other provision for the compensation of his executors, that shall be deemed a full compensation for his services, unless he shall, by a written instrument, filed in the probate court, renounce all claim for compensation provided by the will.

SEC. 220. No administrator or executor shall purchase any claim against

the estate he represents; and if he shall have paid any claim for less than its nominal value, he shall only be entitled to charge in his account so much as he shall have actually paid.

SEC. 221. When no compensation shall have been provided by the will, or the executor shall renounce all claim thereto, he shall be allowed commission upon the amount of the whole estate accounted for by him, as follows: For the first thousand dollars, at the rate of seven per cent.; for all above that sum, and not exceeding ten thousand dollars, at the rate of five per cent.; for all above that sum, at the rate of four per cent., and the same commissions shall be allowed to administrators. In all cases such further allowance may be made as the probate judge may deem just and reasonable for any extraordinary services not required by an executor or administrator in the common course of his duty: Provided, the total amount of such allowances shall not exceed the amount of commission allowed by this section.

SEC. 222. At the third term of the court after his appointment, and thereafter at any time when required by the court, either upon its own motion or upon the application of any person interested in the estate, the executor or administrator shall render, for the information of the court, an exhibit under oath, showing the amount of money received and expended by him, the amount of all claims presented against the estate, and the names of the claimants, and all other matters necessary to show the condition of its affairs.

SEC. 223. If the executor or administrator fail to render an exhibit at the third term of the court, it shall be the duty of the judge to cause a citation to be issued requiring him to appear and render it.

SEC. 224. Any person interested in the estate may, at any time before the final settlement of accounts, present his petition to the probate judge, praying that the executor or administrator be required to appear and render such exhibit, setting forth the facts showing that it is necessary and proper that such an exhibit should be made.

SEC. 225. If the judge be satisfied, either from the oath of the applicant or from other testimony that may be offered, that the facts alleged are true, and shall consider the showing of the applicant sufficient, he shall direct a citation to be issued to the executor or administrator, requiring him to appear at some day to be named in the citation, which shall be during a term of the court, and render an exhibit as prayed for.

SEC. 226. When an exhibit is rendered by an executor or administrator, any person interested may appear, and by objections in writing contest any account or statement therein contained. The court may examine the executor or administrator, and if he has been guilty of negligence, or has wasted, or embezzled, or mismanaged the estate, his letters shall be revoked.

SEC. 227. If any executor or administrator neglect or refuse to appear and render an exhibit after having been duly cited, an attachment may be duly issued against him, or his letters may be revoked in the discretion of the court.

SEC. 228. Every executor or administrator shall render a full account of

his administration upon the expiration of one year from the time of his appointment. If he fail to present his account it shall be the duty of the judge to compel the rendering of such account by attachment, and any person interested in the estate may apply for and obtain an attachment, but no attachment shall issue unless a citation has been first issued and returned, requiring the executor or administrator to appear and show cause why an attachment should not issue.

SEC. 229. Whenever the authority of an executor or administrator shall cease or be revoked for any reason, he may be cited to account before the probate court at the instance of the person succeeding to the administration of the same estate, in like manner as he might have been cited by any person interested in the estate during the time he was executor or administrator.

SEC. 230. If the executor or administrator resides out of the county, or absconds, or conceals himself so that the citation cannot be personally served, and shall neglect to render an account within thirty days after the time above prescribed, or if he shall neglect to render an account within thirty days after being committed where the attachment has been executed, his letters shall be revoked.

SEC. 231. In rendering his account, the executor or administrator shall produce vouchers for all charges and expenses which he shall have paid, which vouchers shall be filed and remain in the court; and he may be examined on oath touching such payments, and also touching any property and effects of the deceased, and the disposition thereof.

SEC. 232. On the settlement of his account he may be allowed any item of expenditure not exceeding twenty dollars, for which no voucher is produced, if such item be supported by his own oath positive to the fact of payment, specifying where and to whom the payment was made, and if such oath be uncontradicted; but such allowances in the whole shall not exceed five hundred dollars for payment in behalf of any one estate.

SEC. 233. When the account is rendered for settlement, notice thereof shall be given by the clerk, by causing notices to be posted up in three public places in the county. The notice shall set forth the name of the estate and of the executor or administrator, and the day appointed for the settlement of the account, which shall be on some day of a term of a court.

SEC. 234. On the day appointed, or any subsequent day to which the hearing may be adjourned by the court, any person interested in the estate may appear and file his exceptions in writing to the account, and contest the same.

SEC. 235. If there be any minor interested in the estate, who has no legally appointed guardian, the court shall appoint some disinterested person to represent him, who, on behalf of the minor, may contest the account as any other person having an interest might contest it, and who shall be allowed by the court for his services a reasonable compensation.

SEC. 236. The hearing and allegations of the respective parties may be adjourned from time to time as shall be necessary, and the court may appoint one or more auditors to examine the accounts and make report

thereon, subject to confirmation, and may allow a reasonable compensation to such auditors, to be paid out of the estate of the deceased.

SEC. 237. The settlement of the account and the allowance thereof by the court, or upon appeal, shall be conclusive against all persons in any way interested in the estate, saving, however, to all persons laboring under any legal disability, their rights to proceed against the executor or administrator, either individually or upon his bond, within two years after their respective disabilities shall cease, and in any action brought by any such person, the allowance and settlement of the account shall be deemed presumptive evidence of its correctness.

SEC. 238. The account shall not be allowed by the court until it be first proved that notice has been given as required by this chapter, and the decree shall show that such proof was made to the satisfaction of the court, and shall be conclusive evidence of the fact.

SEC. 239. The debts of the estate shall be paid in the following order: 1st. Funeral expenses; 2d. The expenses of the last sickness; 3d. Debts having preference by the laws of the United States; 4th. Judgments rendered against the deceased in his lifetime, and mortgages in the order of their date; 5th. All other demands against the estate.

SEC. 240. The preference given in the preceding section to a mortgage shall only extend to the proceeds of the property mortgaged. If the proceeds of such property be insufficient to pay the mortgage, the part remaining unsatisfied shall be classed with other demands against the estate.

SEC. 241. If the estate be insufficient to pay all the debts of any one class, each creditor shall be paid a dividend in proportion to his claim; and no creditor of any one class shall receive any payment until all those of the preceding class shall be fully paid.

SEC. 242. It shall be the duty of the executor or administrator, as soon as he has sufficient funds in his hands, to pay the funeral expenses and the expenses of the last sickness, and the allowance made to the family of the deceased; and he may retain in his hands the necessary expenses of administration, but he shall not be obliged to pay any other debt, or any legacy, until, as prescribed in this chapter, the payment has been ordered by the court.

SEC. 243. Upon the settlement of the accounts of the executor or administrator, at the end of the year, as required in this chapter, the court shall make an order for the payment of the debts as the circumstances of the estate shall require. If there be not sufficient funds in the hands of the executor or administrator, the court shall specify in the decree the sum to be paid to each creditor.

SEC. 244. If there is any claim not due, or any contingent or disputed claim against the estate, the amount thereof, or such part of the same as the holder would be entitled to if the claim were due, or established, or absolute, shall be paid into the court, where it shall remain to be paid over to the party when he shall become entitled thereto, or, if he fail to establish his claim, to be paid over or distributed as the circumstances of the estate require: Provided, that if any creditor whose claim has been allowed,

but is not yet due, shall appear and assent to a deduction therefrom of the legal interest for the time the claim has yet to run, he shall be entitled to be paid accordingly.

SEC. 245. Whenever a decree shall be made by the probate court for the payment of creditors, the executor or administrator shall be personally liable to each creditor for his claim, or the dividend thereon, and execution may be issued on such decree as upon a judgment in the district court, in favor of each creditor, and the same proceeding may be had under such execution as if it had been issued from the district court. The executor or administrator shall also be liable on his bond to each creditor.

SEC. 246. When the accounts of the administrator or executor have been settled, and an order made for the payment of debts and distribution of the estate, no creditor whose claim was not included in the order for payment shall have any right to call upon the creditors who have been paid, or upon the heirs, devisees, or legatees, to contribute to the payment of his claim; but if the executor or administrator shall have failed to give the notice to the creditors as prescribed by this chapter, such creditor may recover on the bond of the executor or administrator the amount of his claim, or such part thereof as he would have been entitled to had it been allowed: Provided, that this section shall not apply to any creditor whose claim was not due one year before the day of settlement, or whose claim was contingent and did not become absolute one year before such day.

SEC. 247. If the whole of the debts shall have been paid by the first distribution, the court shall proceed to direct the payment of legacies and the distribution of the estate among the heirs, legatees, or other persons entitled. But if there be debts remaining unpaid, the court shall give such extension of time as may be reasonable for a final settlement of the estate.

SEC. 248. At the time designated, or sooner, if within that time all the property of the estate shall have been sold, or there shall be sufficient funds in his hands for the payment of all the debts due by the estate, the executor or administrator shall render a final account and pray a settlement of his administration.

SEC. 249. If he neglect to render his account, the same proceedings may be had as prescribed in this chapter, in regard to the first account to be rendered by him; and all the provisions of this chapter relative to the last-mentioned account, and the notice and settlement thereof, shall apply to his account presented for final settlement.

Of the Partition and Distribution of Estates.

SEC. 250. At any time subsequent to the third term of the probate court, after the issuing of letters testamentary or of administration, any heir, devisee, or legatee may present his petition to the court, that the legacy or share of the estate to which he is entitled may be given to him, upon his giving bonds with security for the payment of his proportion of the debts of the estate.

SEC. 251. Notice of the application shall be given to the executor or administrator, and to all persons interested in the estate, in the same man-

ner that notice is required to be given of the settlement of the account of an executor or administrator.

SEC. 252. The executor or administrator, or any person interested in the estate, may appear and resist the application, or any other heir, devisee, or legatee may make a similar application for himself.

SEC. 253. If, at the hearing, it appear that the estate is but little indebted, and that the share of the party or parties applying may be allowed to him or them, without injury to the creditors of the estate, the court shall make a decree in conformity with the prayer of the applicant or applicants: Provided, each one of them shall first execute and deliver to the executor or administrator a bond in such sum as shall be designated by the probate judge, and with sureties to be approved by him, payable to the executor or administrator, conditioned for the payment by the heir, legatee, or devisee, whenever required, of his proportion of the debts due from the estate.

SEC. 254. Such decree may order the executor or administrator to deliver to the heir, legatee, or devisee, the whole portion of the estate to which he may be entitled, or only a part thereof.

SEC. 255. If, in the execution of such decree, any partition be necessary between two or more of the parties interested, it shall be made in the manner hereinafter prescribed.

SEC. 256. The costs of the proceedings authorized by the preceding section shall be paid by the applicant, or, if there be more than one, shall be apportioned equally amongst them.

SEC. 257. Whenever any bond has been executed and delivered under the provisions of the preceding sections, and the executor or administrator shall ascertain that it is necessary for the settlement of the estate to require the payment of any part of the money thereby secured, he shall petition the court for an order requiring the payment, and shall have a citation issued and served on the party bound, requiring him to appear and show cause why the order shall not be made. At the hearing, the court, if satisfied of the necessity of such payment, shall make an order accordingly, designating the amount, and giving a time within which it shall be paid. If the money be not paid within the time allowed, an action may be maintained by the executor or administrator on the bond.

SEC. 258. Upon the final settlement of the accounts of the executor or administrator, or at any subsequent time, upon the application of the executor or administrator, or of any heir, legatee, or devisee, the court shall proceed to distribute the residue of the estate, if any, among the persons who are by law entitled.

SEC. 259. In the decree the court shall name the persons and the proportion or parts to which each shall be entitled, and such persons shall have the right to demand and recover their respective shares from the executor or administrator, or any person having the same in possession.

SEC. 260. The decree may be made on the application of the executor or administrator, or of any person interested in the estate, and shall only be

made after notice has been given in the manner required in regard to an application for the sale of land by an executor or administrator. The court may order such further notice to be given as it may deem proper.

SEC. 261. When the estate, real or personal, assigned to two or more heirs, devisees, or legatees, shall be in common and undivided, and the respective shares shall not be separated and distinguished, partition and distribution may be made by three disinterested persons, to be appointed commissioners for that purpose by the probate judge, who shall be duly sworn to the faithful discharge of their duties, and the court shall issue a warrant to them for that purpose.

SEC. 262. If the real estate shall be in different counties, the probate court may, if it shall judge proper, appoint different commissioners for each county; and in such cases the estate in each county shall be divided separately as if there was no other estate to be divided; but the commissioners first appointed shall, unless otherwise directed by the probate court, make division of such real estate wherever situated within this Territory.

SEC. 263. Such partition and distribution may be ordered on the petition of any of the persons interested; but before any partition shall be ordered, as directed in this chapter, notice shall be given to all persons interested who shall reside in this Territory, or their guardians, and to agents, attorneys, or guardians, if there be any in this Territory, of such as reside out of the Territory either personally or by public notice, as the probate court shall direct.

SEC. 264. Partition of the real estate may be made as provided in this chapter, although some of the original heirs or devisees may have conveyed their shares to other persons, and such shares shall be assigned to the person holding the same, in the same manner as they otherwise should have been to such heirs or devisees.

SEC. 265. The several shares in the real and personal estate shall be set out to each individual in proportion to his right, by such metes and bounds, or description, that the same can be easily distinguished, unless two or more of the parties interested shall consent to have their shares set out, so as to be held by them in common and undivided.

SEC. 266. When any such real estate cannot be divided without prejudice or inconvenience to the owners, the probate court may assign the whole to one or more of the parties entitled to shares therein, who will accept it, always preferring the males to the females, and among children preferring the elder to the younger: Provided, the party so accepting the whole shall pay to the other parties interested their just proportion of the true value thereof, or shall secure the same to their satisfaction; and the true value of the estate shall be ascertained by commissioners appointed by the probate court, and sworn for that purpose.

SEC. 267. When any tract of land or tenement shall be of greater value than either party's share in the estate to be divided, and cannot be divided without injury to the same, it may be set off by the commissioners appointed to make partition to either of the parties who will accept it, giving preference as prescribed in the preceding section: Provided, the party so accepting shall pay or secure to one or more of the others such sums as the

commissioners shall award to make the partition equal, and the commissioners shall make their award accordingly; but such partition shall not be established by the court until the sums so awarded shall be paid to the parties entitled to the same, or secured to their satisfaction.

SEC. 268. When it cannot otherwise be fairly divided, the whole or any part of the estate, real or personal, may be recommended by the commissioners to be sold; and if the report be confirmed, the court may order a sale by the executor or administrator, or by an agent appointed for the purpose, and distribute the proceeds.

SEC. 269. When a partition of real estate among heirs or devisees shall be required, and such real estate shall be in common, and undivided with the real estate of any other person, the commissioners shall first divide and sever the estate of the deceased from the estate in which it lies in common, and such division so made and established by the probate court shall be binding upon all the persons interested.

SEC. 270. Before any partition shall be made, or any estate divided as provided in this chapter, guardians shall be appointed for all minors and insane persons interested in the estate to be divided; and some discreet person shall be appointed to act as agent for such parties as reside out of the Territory; and notice of the appointment of such agent shall be given to the commissioners in their warrant; and notice shall be given to all persons interested in the partition, their guardians or agents, by the commissioners, of the time when they shall proceed to make partition.

SEC. 271. The commissioners shall make report of their proceedings to the probate court in writing, and the court may, for sufficient reasons, set aside such report, and commit the same to the same commissioners or appoint others; and the report, when finally accepted and established, shall be recorded in the records of the probate court, and a copy thereof, attested by the clerk under the seal of the court, shall be recorded in the office of the recorder of the county where the lands lie.

SEC. 272. When the probate court shall make a decree assigning the residue of any estate to one or more persons entitled to the same, it shall not be necessary to appoint commissioners to make partition or distribution of such estate, unless the parties to whom the assignment shall be decreed, or some of them, shall request that such partition shall be made.

SEC. 273. All questions as to advancements made, or alleged to have been made, by the deceased to any heirs, may be heard and determined by the probate court, and shall be specified in the decree assigning the estate, and in the warrant to the commissioners, and the final decree of the probate court, or in case of appeal, of the district or supreme court, shall be binding on all parties interested in the estate.

SEC. 274. When any estate shall be assigned by decree of the court, or distributed by commissioners, as provided in this chapter, to any person residing out of this Territory, and having no agent therein, and it shall be necessary that some person should be authorized to take possession and charge of the same for the benefit of such absent person, the court may appoint an agent for that purpose, and authorize him to take charge of such

estate, as well as to act for such absent person in the partition and distribution.

SEC. 275. Such agent shall give a bond to the judge of probate, to be approved by him, faithfully to manage and account for such estate, before he shall be authorized to receive the same; and the court appointing such agent may allow a reasonable sum out of the profits of the estate for his services and expenses.

SEC. 276. When the estate shall remain in the hands of the agent unclaimed for a year, it shall be sold under the order of the court, and the proceeds, deducting the expenses of the sale, to be allowed by the court, shall be paid into the Territorial treasury. When the payment is made, the agent shall take from the treasurer duplicate receipts, one of which he shall file in the office of the board of Territorial auditors, and the other in the probate court.

SEC. 277. The agent shall be liable on his bond for the care and preservation of the estate while in his hands, and for the payment of the proceeds of the sale, as required in the preceding section, and may be sued theron by any person interested.

SEC. 278. When any person shall appear and claim the money paid into the treasury, the probate court making the distribution being first satisfied of his right, shall grant him a certificate under its seal, and upon the presentation of the certificate to the board of Territorial auditors, they shall draw their warrant on the treasurer for the amount.

SEC. 279. When the estate has been fully administered, and it is shown by the executor or administrator, by the production of satisfactory vouchers, that he has paid all sums of money due from him, and delivered up under the order of the court all the property of the estate to the parties entitled, the court shall make a decree discharging him from all liability to be incurred thereafter.

SEC. 280. The final settlement of an estate shall not prevent a subsequent issuance of letters of administration should other property of the estate be subsequently discovered, or should it become necessary or proper from any cause that letters should again be issued.

Removal of Executors and Administrators in certain Cases.

SEC. 281. Whenever the probate judge has reason to believe, from his own knowledge, or from credible information, that any executor or administrator has wasted, embezzled, or mismanaged, or is about to waste or embezzle the property of the estate committed to his charge, or has committed or is about to commit a fraud upon the estate, or has become incompetent to act, it shall be his duty, by an order entered upon the minutes of the court, to suspend the powers of such executor or administrator until the matter can be investigated.

SEC. 282. During the suspension of the powers of the executor or administrator, under the authority of the preceding section, the probate judge may, if the condition of the estate requires it, appoint a special

administrator to take charge of the effects of the estate, who shall give the bond and account as other special administrators are required to do.

SEC. 283. When such suspension has been made, notice thereof shall be given to the executor or administrator, and he shall be cited to appear and show cause why his letters should not be revoked. If he fail to appear in obedience to the citation, or if, appearing, the court be satisfied that there exists cause for his removal, his letters shall be revoked, and letters of administration granted anew, as the case may require.

SEC. 284. At the hearing, any person interested in the estate may appear and file his allegations in writing, showing that the executor or administrator should be removed. Such allegations shall be heard and determined by the court.

SEC. 285. If the executor or administrator has absconded, or conceals himself, or has removed from the county, notice may be given him of the pendency of the proceedings by publication, in such manner as the court may direct; and the court may proceed upon such notice as if the citation had been personally served.

SEC. 286. In the proceedings authorized by the five preceding sections of this chapter, for the removal of an executor or administrator, the court may compel his attendance by attachment, and may compel him to answer questions on oath touching his administration, and upon his refusal so to do, may commit him until he obey.

Miscellaneous Provisions.

SEC. 287. All orders and decrees made by the probate court during its terms, shall be entered at length in the minute-book of the court; and also all orders which the probate judge is empowered to make out of term-time, and which are by this chapter specially required to be so entered. Upon the close of each term, the judge shall sign the minutes of the proceedings.

SEC. 288. Whenever personal notice is required by this chapter to be given to any party to a proceeding in the probate court, and no other mode of giving notice is prescribed, it shall be given by citation issued from the court, signed by the clerk, and under the seal of the court directed to the sheriff of the proper county, and requiring him to cite such persons to appear before the court or judge as the case may be, at a time and place to be named in the citation. In the body of the citation shall be briefly stated the nature or character of the proceeding.

SEC. 289. The officer to whom the citation is directed shall serve it by delivering a copy to the person named therein, or to each of them if there be more than one, and shall return the original to the court according to its direction, endorsing thereon the time and manner of service.

SEC. 290. When no other time is specially prescribed, citation shall be served at least ten days before the return day thereof.

SEC. 291. Unless otherwise specially prescribed, the clerk of the probate court shall have power to administer all oaths necessary and proper to be

taken, touching any matter pending in the probate court, or in any manner connected with any proceedings of which the court has jurisdiction, and he shall have power to issue citations and subpœnas upon the application of any party, without the order of the judge, except in those cases in which such order is specially required by law for the issuing of a citation.

SEC. 292. All writs and processes issuing from the probate court shall be signed by the clerk and authenticated with the seal of the court, except subpœnas, which need not be under seal.

SEC. 293. The practice in the district court shall be applicable to proceedings in the probate court, so far as the same does not conflict with any enactment specially applicable to the probate court, or is not inconsistent with the provisions of this chapter, or the laws to provide for the appointment and prescribe the duties of guardians.

SEC. 294. Appeals shall be allowed from the decisions of the probate court to the district court of the same county in the following cases: First, on all decisions issuing letters testamentary, or of administration or guardianship; second, on all decrees admitting any will to probate or determining the validity of any will; third, on all decrees admitting any will to probate; fourth, on all orders setting apart property or making allowances for the widow, or child or children; fifth, on all orders for the sale or conveyance of real estate; sixth, on all settlements of executors or administrator; seventh, on all orders directing the payment of debts or legacies, or the distribution of the estate among heirs, legatees, or distributors: eighth, on all orders revoking letters testamentary or of administration; ninth, on any allowance, order, decree, rule, or decision whatever, made by the probate court or judge, manifestly irregular or unjust.

SEC. 295. Any person interested in or affected by the decision of the probate court may appeal therefrom, by giving notice in open court during the term at which the decision complained of is made, an entry of which notice shall be made on the minutes, or by filing a notice of appeal with the clerk of the court, and serving written notice upon all others interested, if within the county, at any time within twenty days after the decision complained of is made.

SEC. 296. The appeal shall be deemed waived unless the appellant shall, within twenty days after the appeal is taken, file in the court the bond of himself or some other person in a sum and with security to be approved by the probate judge, conditioned that he will prosecute the appeal, and pay any debt and all damages and costs which may be adjudged against him. The bond shall be payable to the Territory of Arizona, and upon any breach of the condition thereof, may be sued upon by any one or more of the parties interested, in his or their own names; but the appeal of any executor or administrator shall be complete and effectual without any bond being filed. When the appeal is taken from any decision made by the probate judge out of term, it may be heard by the district judge out of term, at any time after the appeal is perfected, upon previous notice of ten days being given to all parties interested, if in the county.

SEC. 297. The appeal shall not be a *supersedeas* in any other matter relating to the administration of the estate, except that upon which the

appeal is specially taken. When the appeal is taken and perfected, the clerk shall deposit in the office of the district court all the original papers in his office relating to the subject matter of the appeal.

SEC. 298. Upon the filing of the papers in the district court, that court shall be possessed of the cause, and shall proceed to hear, try, and determine the same anew, without regarding any error, defect, or other imperfection in the proceedings of the probate courts.

SEC. 299. Issues of fact joined in the probate court, shall be tried by the district court on appeal, as herein provided, and in no other manner.

SEC. 300. When judgment upon an appeal from the probate court has been rendered by the district court, the clerk shall return into the probate court all the original papers, together with a certified transcript of the judgment or decree, and the probate court shall carry the same into effect.

SEC. 301. In all cases in which it is not otherwise specially prescribed by law, the probate court, or the district court on appeal, may award costs to any party in its discretion, to be paid by any other party or parties, or to be paid out of the estate which is the subject of controversy, as justice shall require.

SEC. 302. When costs are awarded to one party, to be paid by another, the said courts respectively may issue execution therefor.

SEC. 303. The terms of the probate court shall be holden at the county seat, on the first Monday of January, April, July, and October in each year, and the judge may hold such adjourned or special terms as he shall think proper.

CHAPTER XXX.

Of Marriages.

SEC. 1. Marriage is considered in law as a civil contract, to which the consent of the parties is essential.

SEC. 2. All marriages between parents and children, including grandparents and grandchildren of every degree; between brothers and sisters of the one-half as well as the whole blood; and between uncles and nieces, aunts and nephews by consanguinity, are declared to be incestuous, and absolutely void. This section shall extend to illegitimate as well as to legitimate children and relations.

SEC. 3. All marriages of white persons with negroes or mulattoes are declared to be illegal and void.

SEC. 4. Whoever shall contract marriage in fact, contrary to the prohibitions in the two preceding sections, and whoever shall solemnize any such marriage, shall be deemed guilty of a misdemeanor, and upon conviction, shall be punished by fine or imprisonment, or both, at the discretion of the

jury which shall try the cause; or, if the conviction be by confession, at the discretion of the court; the fine to be not less than one hundred nor more than ten thousand dollars, and the imprisonment to be not less than three months nor more than ten years.

SEC. 5. All marriages contracted without this Territory, which would be valid by the laws of the country in which the same were contracted, shall be valid in all courts and places within this Territory.

SEC. 6. Every judge and justice of the peace, and every clergyman of any denomination, or licensed preacher of the gospel, may perform the ceremony of marriage in this Territory.

SEC. 7. No judge, justice of the peace, clergyman, preacher of the gospel, or other person, shall join in marriage any male under the age of eighteen years, or female under the age of sixteen years, without the consent of the parent or guardian, or other person under whose care and government such minor may be. Any person who shall violate the provisions of this section shall be deemed guilty of a misdemeanor, and on conviction, shall be punished by fine not exceeding one thousand dollars.

SEC. 8. Every person having authority to join others in marriage, shall keep a record of all marriages solemnized before him, and within three months transmit a certificate of every marriage (containing both Christian names and surnames) to the recorder of the county in which the marriage took place; and any person refusing or neglecting to make such return within the above-required time, shall forfeit for every offence the sum of one hundred dollars, to be recovered, with costs, by the recorder.

SEC. 9. The recorder shall record all such returns of marriages in a book to be kept for that purpose, within one month after receiving the same, for which he shall be allowed, for each entry, two dollars. If any recorder shall neglect or refuse to record, within the said time, any return to him made, he shall forfeit one hundred dollars, to be recovered, with costs, by any person who shall prosecute for the same.

SEC. 10. The books of marriages to be kept by the respective recorders, and copies of entries therein, certified by him under his official seal, shall be evidence in all courts.

SEC. 11. If any persons authorized to solemnize any marriage, shall wilfully make a false return of any marriage, or pretended marriage, to the recorder, or if the recorder shall wilfully make a false record of any return of a marriage, he shall be deemed guilty of a misdemeanor, and shall be punished by fine, not less than one hundred, nor more than five thousand dollars, or by imprisonment of not less than three months nor more than five years.

CHAPTER XXXI.

Of Divorce.

SEC. 1. All marriages which are prohibited by law, on account of consanguinity or affinity between the parties, or on account of either of them having a former wife or husband then living; all marriages solemnized when either of the parties was insane or an idiot; and all marriages between a white person and a negro, shall, if solemnized within this Territory, be absolutely void, without any decree of divorce or other legal process.

SEC. 2. In case of a marriage solemnized when either of the parties was under the age of legal consent, if they shall separate during such nonage, and not cohabit together afterwards, or in case the consent of one of the parties was obtained by force or fraud, and there shall have been no subsequent voluntary cohabitation of the parties, the marriage shall be deemed void without any decree of divorce or other legal process.

SEC. 3. When a marriage is supposed to be void, or the validity thereof is doubted, for any of the causes mentioned in the two preceding sections, either party, excepting in cases where a contrary provision is hereinafter made, may file a complaint in the district court of the county where the parties, or one of them, reside, for annulling the same; and such complaint shall be filed, and proceedings shall be had thereon, as in the case of a petition or bill filed in said court for a divorce; and, upon due proof of the nullity of the marriage, it shall be declared void by a decree or sentence of nullity.

SEC. 4. When the validity of any marriage shall be denied or doubted by either of the parties, the other party may file a complaint in the manner aforesaid, for affirming the marriage; and, upon due proof of the validity thereof, it shall be declared valid by a decree or sentence of the court; and such decree, unless reversed on appeal, shall be conclusive upon all persons concerned.

SEC. 5. When either party shall be sentenced to imprisonment for life in any prison, jail, or house of correction, the marriage shall be thereby absolutely dissolved, without any decree of divorce or other legal process—and no pardon granted to the party so sentenced shall restore such party to his or her conjugal rights.

SEC. 6. A divorce from the bonds of matrimony may be decreed by the district court of the county where the parties, or one of them, reside, on the application by complaint of the aggrieved party, in either of the following cases:

1. Whenever adultery has been committed by any husband or wife;
2. When one of the parties was physically incompetent at the time of the marriage;
3. When one of the parties has been sentenced to imprisonment in any prison, jail, or house of correction, for three years or more; and no pardon granted to the party so sentenced, after a divorce for that cause, shall restore such party to his or her conjugal rights;
4. When either party shall desert the other for a term of two years;
5. When the husband or wife shall have become an habitual drunkard;

6. And the district courts may, in their discretion, upon application, as in other cases, divorce from the bonds of matrimony any party who is a resident of this Territory, and whose husband or wife shall have obtained a divorce in any other State.

7. For the cause of extreme cruelty, whether practised by using personal violence, or by any other means: and a divorce may be decreed on the complaint of the wife, when the husband, being of sufficient ability to provide a suitable maintenance for her, shall grossly or wantonly and cruelly refuse or neglect so to do.

SEC. 7. No divorce shall be granted unless the party exhibiting the complaint therefor shall have resided in this Territory one year immediately preceding the time of exhibiting such complaint; or unless the marriage was solemnized in this Territory, and the complainant shall have resided in this Territory from the time of such marriage to the time of exhibiting the complaint.

SEC. 8. No divorce shall be decreed in any case when it shall appear that the complaint therefor was founded in or exhibited by collusion between the parties, nor where the party complaining shall be guilty of the same crime or misconduct charged against the respondent.

SEC. 9. A complaint for a divorce may be exhibited by a wife in her own name, as well as a husband; and, in all cases, the respondent may answer such complaint without oath or affirmation.

SEC. 10. Suits to annul or affirm a marriage, or for a divorce, shall be conducted in the same manner as other suits in court; and the court shall have power to award issues, to decree costs, and to enforce its decrees as in other cases.

SEC. 11. In every suit brought, either for a divorce or for a separation, the court or judge may, in its discretion, require the husband to pay any sums necessary to enable the wife to carry on or defend the suit during its pendency; and it may decree costs against either party, and award execution for the same; or it may direct such costs to be paid out of any property sequestered, or in the power of the court, or in the hands of a receiver.

SEC. 12. After the exhibiting of a complaint in a suit to annul a marriage or for a divorce, the court may at any time, either in term or vacation, on the petition of the wife, prohibit the husband from imposing any restraint on her personal liberty during the pendency of the suit.

SEC. 13. The court or judge may, in like manner, on the application of either party, make such order concerning the care and custody of the minor children of the parties and their suitable maintenance during the pendency of such suit, as shall be deemed proper and necessary, and for the benefit of the children.

SEC. 14. Upon pronouncing a sentence or decree of nullity of a marriage, and also upon decreeing a divorce, the court may make such further decree as it shall deem just and proper concerning the care, custody, and maintenance of the minor children of the parties, and may determine with which of the parents the children, or any of them, shall remain.

SEC. 15. The court may, from time to time, afterwards, on the complaint of either of the parents, revise and alter such decree concerning the care, custody, and maintenance of the children, or any of them, and make a new decree concerning the same, as the circumstances of the parents and the benefit of the children shall require.

SEC. 16. Whenever the nullity of a marriage or a divorce for any cause, excepting that of adultery committed by the wife, shall be decreed, and when the husband shall be sentenced to imprisonment for life, the wife shall be entitled to the immediate possession of all her real estate in like manner as if her husband were dead.

SEC. 17. Upon every such dissolution of a marriage as is specified in the preceding section, the court may make a further decree for restoring to the wife the whole, or such part as it shall deem just and reasonable, of the personal estate that shall have come to the husband by reason of the marriage, or for awarding to her the value thereof, to be paid by her husband in money.

SEC. 18. Upon every divorce for adultery committed by the husband, when any personal estate of the wife, or money in lieu thereof, shall be awarded to her, as provided in the preceding section—the court, instead of ordering the same to be delivered or paid into the hands of the wife, may order it to be delivered or paid into the hands of a trustee or trustees, to be appointed by the court, upon trust to invest the same, and to apply the income thereof to the support and maintenance of the wife and of the minor children of the marriage, or any of them, in such manner as the court shall direct.

SEC. 19. Such trustees shall also pay over the principal sum to the wife and children of the marriage, when ordered by the court, in such proportions and at such times as the court shall direct, regard being had, in the disposition of the said income, as well as of the principal sum, to the situation and circumstances of the wife and children; and the said trustees shall give such bonds as the court shall require, for the faithful performance of their trust.

SEC. 20. Whenever the court shall think proper to award to the wife any of her personal estate, or any money in lieu thereof, in pursuance of the foregoing provisions, such court may require the husband to disclose on oath what personal estate has come to him by reason of the marriage, and how the same has been disposed of, and what portion thereof still remains in his hands.

SEC. 21. Upon every divorce for any cause excepting that of adultery committed by the wife, if the estate and effects restored or awarded to the wife shall be insufficient for the suitable support and maintenance of herself and such children of the marriage as shall be committed to her care and custody, the court may further decree to her such part of the personal estate of the husband, and such alimony out of his estate, as it shall deem just and reasonable, having regard to the ability of the husband, and the character and situation of the parties, and all the other circumstances of the case.

SEC. 22. When the marriage shall be dissolved by the husband being

sentenced to imprisonment for life, and when a divorce shall be decreed for the cause of adultery committed by the husband, or for the misconduct or habitual drunkenness of the husband, or on account of his being sentenced to imprisonment for a term of three years or more, the wife shall be entitled to her dower in his lands, in the same manner as if he were dead; but she shall not be entitled to dower in any other case of divorce.

SEC. 23. When a divorce shall be decreed for the cause of adultery committed by the wife, the husband shall hold her personal estate for ever, and he shall also hold her real estate so long as they shall both live; and if he shall survive her, and there shall have been issue of the marriage born alive, he shall hold her real estate for his own life, as tenant by the curtesy.

SEC. 24. In the case last mentioned, the court may, by the decree, allow the wife for her subsistence as much of her said personal or real estate, or of the income thereof, as such court shall judge necessary.

SEC. 25. In all cases when alimony or other allowance shall be decreed for the wife or children, the court may require sufficient security to be given by the husband for the payment thereof according to the terms of the decree; and upon the neglect or refusal of the husband to give such security, or upon his failure to pay such alimony or allowance, the court may sequester his personal estate, and the rents and profits of his real estate, and may appoint a receiver thereof, and cause such personal estate, and the rents and profits of such real estate, to be applied to the payment thereof.

SEC. 26. After a decree for alimony or other allowance, for the wife and children, or either of them, and also after a decree for the appointment of trustees, to receive and hold any property for the use of the wife or children as before provided, the court may, from time to time, on the complaint of either of the parties, revise and alter such decree, respecting the amount of such alimony or allowance and the payment thereof, and also respecting the appropriation and payment of the principal and income of the property so held in trust, and may make any decree respecting any of the said matters which such court might have made in the original suit.

SEC. 27. A divorce for the cause of adultery committed by the wife, shall not affect the legitimacy of the issue of the marriage, but the legitimacy of such children, if questioned, may be determined by the court upon the proofs in the cause; and in every case, the legitimacy of all children begotten before the commencement of the suit shall be presumed until the contrary be shown.

SEC. 28. Upon the dissolution of a marriage on account of the nonage, insanity, or idiocy of either party, the issue of the marriage shall be deemed to be in all respects the legitimate issue of the parent who, at the time of the marriage, was capable of contracting.

SEC. 29. When a marriage is dissolved on account of a prior marriage of either party, and it shall appear that the second marriage was contracted in good faith, and with the full belief of the parties that the former wife or husband was dead, that fact shall be stated in the decree of divorce or nullity; and the issue of such second marriage, born or begotten before the

commencement of the suit, shall be deemed to be the legitimate issue of the parent who, at the time of the marriage, was capable of contracting.

SEC. 30. Upon the dissolution, by decree or sentence of nullity, of any marriage that is prohibited on account of consanguinity or affinity between the parties, or of any marriage between a white person and a negro, the issue of the marriage shall be deemed to be illegitimate.

SEC. 31. If any persons, after being divorced from the bonds of matrimony for any cause whatever, shall cohabit together, they shall be liable to all the penalties provided by law against adultery.

SEC. 32. A complaint to annul a marriage on the ground that one of the parties was under the age of legal consent, may be exhibited by the parent or guardian entitled to the custody of such minor, or by the next friend of such minor; but in no case shall such marriage be annulled on the application of a party who was of the age of legal consent at the time of the marriage, nor when it shall appear that the parties, after they had attained the age of consent, had freely cohabited as man and wife.

SEC. 33. A complaint to annul a marriage on the ground of insanity or idiocy, may be exhibited by any person admitted by the court to prosecute as the next friend of such idiot or lunatic.

SEC. 34. The marriage of a lunatic may also be declared void, upon the application of the lunatic, after the restoration of reason; but in such case no sentence of nullity shall be pronounced, if it shall appear that the parties freely cohabited as husband and wife, after the lunatic was restored to a sound mind.

SEC. 35. No marriage shall be annulled on the ground of force or fraud, if it shall appear that at any time before the commencement of the suit, there was a voluntary cohabitation of the parties as husband and wife, after such force was used or fraud discovered.

SEC. 36. If there shall be any issue of a marriage, annulled on the ground of force or fraud, the court shall decree their custody to the innocent parent, and may also decree a provision for their education and maintenance out of the estate and property of the guilty party.

SEC. 37. A suit to annul a marriage, on the ground of the physical incapacity of one of the parties, shall only be maintained by the injured party against the party whose incapacity is alleged; and shall, in all cases, be brought within two years from the solemnization of the marriage.

SEC. 38. No decree of divorce, or of the nullity of a marriage, shall be made solely on the declarations, confessions, or admissions of the parties; but the court shall, in all cases, require other satisfactory evidence of the facts alleged in the bill for that purpose.

SEC. 39. In any suit brought for a divorce on the ground of adultery, although the fact of adultery be established, the court may *deny* a divorce in the following cases:

1. When the offence shall appear to have been committed by the procurement, or with the connivance, of the complainant;

2. When the offence charged shall have been forgiven by the injured party, and such forgiveness be proved by express proof, or by the voluntary cohabitation of the parties, with the knowledge of the offence.

3. When there shall have been no express forgiveness, and no voluntary cohabitation of the parties, but the suit shall not have been brought within five years after the discovery by the complainant of the offence charged.

CHAPTER XXXII.

Of the Rights of Married Women.

SEC. 1. The real and personal estate of every female acquired before marriage, and all property, real and personal, to which she may afterwards become entitled, by gift, grant, inheritance, devise, or in any other manner, shall be and remain the estate and property of such female, and shall not be liable for the debts, obligations, or engagements of her husband, and may be contracted, sold, transferred, mortgaged, conveyed, devised, or bequeathed by her, in the same manner and with the like effect as if she were unmarried.

SEC. 2. Any person who may hold, or who may hereafter hold, as trustee for any married woman, any real or personal estate or other property, under any deed of conveyance or otherwise, may convey to such married woman, by deed or otherwise, all or any portion of such property, or the rents, issues, and profits thereof, for her sole and separate use and benefit.

SEC. 3. Actions may be brought by and against a married woman in relation to her sole property, in the same manner as if she were unmarried, and in cases where the property of the husband cannot be sold, mortgaged, or otherwise encumbered, without the consent of his wife, to be given in the manner prescribed by law, or when his property is exempted by law from sale on execution or other final process issued from any court against him, his wife may bring an action in her own name, with the like effect as in cases of actions in relation to her sole property as aforesaid.

SEC. 4. The husband of any married woman shall not be liable to be sued upon any contract made by such married woman in relation to her sole property, and the wife shall be liable to be sued upon any contract or engagement made by her in cases where her husband is not in law liable, or where he refuses to perform such contract or engagement, and in any case herein authorized, the cause of action shall be deemed to have accrued from and after this chapter takes effect as a law.

SEC. 5. All contracts made between persons in contemplation of marriage, shall remain in full force after marriage takes place.

SEC. 6. That it shall be lawful for any married woman, by herself, and in her name, or in the name of any third person, with his assent, as her trustee, to cause to be insured for her sole use, the life of her husband or the life of any other person, in any life insurance company, of any nature whatever, located in either of the States of the United States of America

or in Great Britain, for any definite period, or for the term of his natural life; and in case of her surviving her husband, or such other person insured in her behalf, the sum or net amount of the policy of insurance due and payable by the terms of the insurance, shall be payable to her, to and for her own use, free from the claims of the representatives of her husband, or of such other person insured, or of any of his creditors, but such exemption shall not apply where the amount of premium annually paid shall exceed the sum of three hundred dollars.

SEC. 7. In case of the death of the wife before the decease of her husband, or of such other person insured, the amount of the insurance may be made payable after her death to her children, for their use, and to their guardian, if under age, or the amount of the policy may be disposed of by such married woman by a last will and testament.

CHAPTER XXXIII.

Of Finance and Taxation.

SEC. 1. Taxes on property in this Territory shall be annually levied and collected in accordance with the provisions of this chapter, and all taxes shall be uniform in their character.

SEC. 2. That all real and personal property within this Territory, not expressly exempted therefrom, shall be subject to taxation in the manner provided by law.

SEC. 3. Real estate shall, for the purposes of taxation, be construed to include all lands within the Territory, and all buildings and fixtures thereon, except in cases otherwise expressly provided by law.

SEC. 4. Personal property, for the purposes of taxation, shall be construed to include:

First. All machinery, machinery for mining purposes, canals, water-races, oxen, horses, mules, cows, beef cattle, sheep, goats, calves, hogs, jacks, jennies, wagons, carriages, buggies, carts, or other vehicles, whether for pleasure or hire, gold and silver watches, musical instruments, and all silver-ware and silver plate.

Second. Shares of stock, or interest in ships, brigs, schooners, sloops, and all other water craft, whether at home or abroad.

Third. All moneys loaned on interest, all capital vested or employed each year in traffic, trade, merchandise, or in any kind of commerce or navigation.

Fourth. The capital stock of all banks, and of all corporations doing business in this Territory, the property of whatever kind of all corportions over and above their capital stock, and all money or funds held by any such corporation in trust, or on deposit, or by persons in trust or on deposit for persons or corporations other than citizens or corporations of this Territory, and used in commerce or trade for the benefit of such persons or corporations.

Fifth. All other property, real or personal, within this Territory, except such as is exempted from taxation as provided in the next section.

SEC. 5. The following property shall be exempt from taxation:

1. Household furniture, including stoves put up and kept for use in any dwelling-house, not exceeding in value two hundred dollars.
2. All spinning and weaving-looms and apparatus, not exceeding in value fifty dollars.
3. All arms and accoutrements required by law to be kept by any person; all wearing apparel of any person or family.
4. The library and school-books of every individual and family not exceeding in value one hundred and fifty dollars, and all family pictures.
5. To each householder ten goats or sheep, with their fleeces, and the yarn or cloth manufactured from the same; two cows, five swine, and provision and fuel for the comfortable subsistence of such householder and family for six months.
6. All the property and lands of the United States and of this Territory.
7. All public or corporate property of the several counties, cities, villages, townships, and school districts in this Territory used or intended for corporate purposes.
8. The personal property of all library, benevolent, charitable, and scientific institutions, incorporated within this Territory, and such real estate belonging to such institutions as shall actually be occupied by them for the purposes for which they were incorporated.
9. All houses of public worship, with the pews or slips and furniture therein, and rights of burial, and tombs while in use as repositories of the dead.
10. The estates of Indians and lands reserved for their use.

SEC. 6. All personal property in the hands of any trustee, agent, administrator, executor, or receiver, and all personal property mortgaged or pledged, shall, for the purposes of taxation, be deemed to be the property of the person who has the possession thereof.

SEC. 7. The sheriff of each county, by virtue of his office, shall be the assessor and collector of taxes for his county, and shall be designated as the "county assessor" or "county collector," as the case may be, and shall hold such offices during the term for which he holds the office of sheriff.

SEC. 8. Before proceeding to assess the taxable property of the county, he shall take and subscribe an oath, and deposit the same in the office of the county recorder, and which oath may be in the following form:

TERRITORY OF ARIZONA, COUNTY OF , *ss.:*

I do solemnly swear (or affirm) that I will to the best of my knowledge and ability, truly and fairly assess, without favor or partiality, the taxable property of the county of at its just cash value.

SEC. 9. The said county assessor may appoint such number of deputy assessors to assist in assessing the property of his county, as he may deem proper; such appointment shall be in writing and filed in the office of the county recorder; and every such deputy, before he proceeds to execute the duties of his appointment, shall take and subscribe the oath

provided in the preceding section, to be taken by the county assessor and filed in the office of the county recorder.

SEC. 10. Such deputies, when so qualified, shall possess the same powers in making such assessments as their principal, but the county assessor shall be responsible for their acts.

SEC. 11. On the first Monday in April in each year, the county assessor, or his deputies, shall proceed to assess the taxable property within his county, and shall continue and complete an assessment roll of the same, on or before the third Monday of May following; and which roll, when so completed, shall be certified by him to be a correct roll of the taxable property of the county and the valuation thereof. *Provided*, that no description of property, except real estate, shall be necessary to be contained in such roll.

SEC. 12. The description of real estate shall be sufficient, if it be such as is generally known or contained in any instrument conveying the same; or the assessor may cause to be platted any village, ranch, or lands used for agricultural purposes, and may number such agricultural lands consecutively, with the name of the owner or occupant; or, if unoccupied, as non-resident, and may describe the same in his assessment roll as follows:

(*Agricultural Lands Adjoining Tucson.*)

"Lot No. 1.
A. B.
10 Acres."

and so consecutively through any such tract, when the lots or subdivisions are adjoining each other. In like manner he may name the streets of villages, and number the several descriptions of property on each street consecutively, and he may describe the several ranches in his county by number, naming the stream or water-course on which each is situated. The plats, when so made, shall be filed and retained in the office of the county recorder, and may be revised and corrected by the county assessor so often as shall become necessary.

SEC. 13. In taking such assessment the assessors shall prepare an assessment roll containing seven columns, numbered consecutively, and which may be in the following form, that is to say:

1. Names of Owners or Occupants.	2. Description of Real Estate.	3. Value of Real Estate.	4. Value of Personal Property.	5. Moneys, Stocks, etc.	6. Value of Mining Property and Interests.	7. Total Valuation.

In column one of such assessment-roll, he shall put down the name of the owner, occupant, or person to whom any property by law should be assessed. In column two he shall put down a description of the real estate, agreeably to the provisions of the preceding section, which description shall be sufficient for all the purposes of this chapter. In column three he shall put down the value of such real estate. In column four the value of personal property, which shall include the property mentioned in subdivision one of section four of this chapter. In column five he shall put down the value of the property, stocks, moneys, rights, credits, and capital mentioned in subdivisions two, three, and four of said section four. In column six he shall put down the value of all property and interests mentioned in the fifth subdivision of said section four; and in column seven, the total valuation of the property contained in the preceding columns, in all cases putting down such property and valuation to each person separately.

SEC. 14. The machinery, tools, implements, real estate, and fixtures of every association, partnership, or individual engaged in mining, shall be assessed by the assessor the same as other property; but if such association, partnership, or individual shall, in the month of September in each year, file with the clerk of the probate court of the county in which their mining business is prosecuted, a statement verified by oath as required by section twenty-three (except the first and second subdivisions thereof) of chapter fifty-one, entitled "Of Corporations for Mining Purposes," and upon such statement shall pay to such county treasurer the taxes provided in section twenty-four (24) of said chapter; then such association, partnership, or individual shall not be liable to the assessment or payment of any other taxes on such property for the year for which such statement and payment is made.

SEC. 15. Upon such payment being made to the county treasurer, he shall give his receipt therefor, specifying the amount and upon what property paid, and upon the production of such receipt the assessor shall not assess such property for the year for which such payment was made. Sixty per centum of all moneys paid under the provisions of the preceding section, shall be appropriated and used as provided in section twenty-two of said chapter fifty-one, and the balance shall be credited to the general fund for county purposes.

SEC. 16. If, in making such assessment, the assessor shall have reason to believe that any person shall not give a full and complete description of the property liable to be assessed, or shall evade any proper inquiry, or refuse to give such description and value, the assessor may require such person to make and deliver to him a statement in writing containing: 1. An accurate description of each parcel of land, with the number of acres and the number and kind of buildings thereon. 2. The number of neat cattle. 3. The number of horses. 4. The number of sheep. 5. The number of hogs. 6. Every wagon and carriage. 7. Every gold and silver watch. 8. Every mule, jack, or jennie. 9. All merchandize owned or possessed by him. 10. Every musical instrument. 11. All moneys and all credits. 12. All other personal property owned or held by him. And every person who, without cause, shall refuse to make and deliver such statement for the space of three days, shall be liable to a penalty of fifty dollars, to be recovered by such assessor in his name of office, together with all costs of suit, one-half of which shall belong to such assessor, and the balance be paid into the county treasury.

SEC. 17. In every case where any person shall neglect or refuse to make out and deliver such statement of his real and personal property, moneys, and credits, or to deliver the same to the assessor, as required by this chapter, it shall be the duty of the said assessor, and he is hereby authorized, to examine on oath the person so refusing, and any other person or persons who he may have good reason to believe, and does believe, has knowledge of the amount or value of any property, money, or credits owned or held by such person so refusing; and said assessor shall assess any property, money, or credits owned or held by such person so refusing, at its true cash value: Provided, that if any person shall neglect or refuse to make such statement, or in case any person owning any taxable property in this Territory, or any money loaned in this Territory, shall be absent from the county or cannot be found therein by the assessor during the time the assessment-roll is required by law to be made, leaving no agent known to such assessor to make the required statement, such assessor is hereby authorized to set down and assess to such person any amount of personal property he may deem just and proper, subject to reduction on review, upon oath of the party in interest, his agent or attorney.

SEC. 18. After the assessment-roll shall have been completed and deposited in the office of the county recorder, as hereinbefore provided, it shall be subject to inspection by all persons interested, until the third Monday in June thereafter, at which latter time the assessor shall be at the recorder's office, for the purpose of hearing any complaint, and, if necessary, correcting such assessment-roll. Any person feeling himself aggrieved by the assessment of his property, may then appear and show cause by the testimony of himself or other testimony, why such assessment-roll should be altered or modified; and if the assessor is satisfied that such alteration or modification should be made, he shall make the same accordingly. The assessor shall continue to hear such applications until all are disposed of, but shall not so continue longer than the first day of July thereafter.

SEC. 19. On the first Monday in July in each year, the board of county commissioners shall proceed to estimate and ascertain the amount of taxes necessary to be assessed upon the taxable property of the county for the year next ensuing, not exceeding, for all purposes, the amount of one dollar and fifty cents upon each one hundred dollars of the valuation of property as contained in the last corrected roll. In such estimate they shall specify the amount to be raised for each particular purpose, and enter their determination and estimate at length upon the record of the proceedings: Provided, that if for any cause the said board shall not meet on the day above appointed, they may meet for such purpose at any time within ten days thereafter.

SEC. 20. As soon as the board of county commissioners shall have made the determination and estimate provided for in the preceding section, the county assessor shall proceed to assess taxes for the amount as estimated, adding thereto and to all other taxes required by law to be assessed by him, not more than ten nor less than five per cent., as shall be directed by the board of county commissioners, for collecting expenses upon the taxable property of the county, according and in proportion to the individual and particular estimate and valuation as specified in the assessment-roll for the year.

SEC. 21. In making such assessment, the value and tax of each particular

species of property as assessed shall be put down in separate columns, and the total amount of taxes in a separate column, which shall constitute the tax-roll for the year. The following form may be used for that purpose.

1. Names of Persons Taxed.	2. Description of Real Estate.	3. Value of Real Estate.	4. Taxes on Real Estate.	5. Value of Personal Property	6. Tax on Personal Property	7. Amount of Money, Stocks, etc.	8. Tax on Money, etc.	9. Value of Mining Property	10. Tax on Mining Property	11. Total Taxes.
A. B.	Lot No. 1. Tucson plat.	$500	$4.20	$1000	$8.40	$500	$4.20	$1000	$8.40	$25.20

SEC. 22. Such tax-roll shall be completed on or before the third Monday of July, and delivered to the judge of probate for his inspection, who shall carefully foot up the several taxes therein levied, and shall give to the county treasurer a statement thereof: and such county treasurer shall immediately charge the amount of such taxes to the county collector. If such tax-roll is found to be correct, the judge of probate as chairman of the board of county commissioners shall annex thereto, immediately under his hand, a warrant commanding such collector to collect from the several persons named in said roll the several sums mentioned in the last column of such roll, opposite their respective names, retaining in his hands the amount of his fees, and to account for and pay over to the county treasurer the amounts therein specified on or before the first day of October then next; and in case any person named in the tax-roll shall neglect or refuse to pay his tax, to levy the same by distress and sale of the goods and chattels of such person.

SEC. 23. The judge of probate shall thereupon deliver such tax-roll, with his warrant annexed, to the county collector for collection; but before he shall deliver such tax-roll and warrant, the county collector shall give to the county treasurer and his successors in office a bond in double the amount of such taxes, with good and sufficient sureties, to be approved by the judge of probate or the county treasurer, conditioned that he shall duly and faithfully perform the duties of his office and pay over all moneys received by him, and shall deliver the same to the county treasurer. For any breach of the conditions of such bond, the county treasurer shall prosecute the same in his name of office, and the moneys collected thereon shall be applied and disposed of agreeably to law.

SEC. 24. If any county collector shall neglect or refuse to give the bond required in the preceding section, he shall forfeit the sum of three hundred dollars, to be collected by the county treasurer, and applied and disposed of as provided in the preceding section in relation to a breach in the condition of such collector's bond; and whenever such neglect or refusal shall occur, a majority of the board of county commissioners are hereby authorized to appoint some suitable person to be county collector, who shall take the oath of office required by law and execute the bond required of the county collector, and when so qualified, shall receive the tax-roll and warrant, and collect and return the taxes thereon in the manner provided in this chapter: Provided, that if any vacancy occur in the office of county

collector by death, inability, or otherwise, the board of county commissioners may at any time fill the vacancy agreeably to the provisions of this section.

Of the Collection and Return of Taxes.

SEC. 25. Every county collector, upon receiving the tax-roll and warrant, shall proceed to collect the taxes therein mentioned, and for that purpose shall call at least once upon the person taxed, if a resident, or at the place of his usual residence in the county, and shall demand the payment of the taxes charged to him on such list.

SEC. 26. In case any person shall neglect or refuse to pay the tax imposed on him, the collector shall levy the same by distress and sale of the goods and chattels of said person, or of any goods and chattels in his possession wherever the same may be found within his county, and no claim of property made thereto by any other person shall be available to prevent a sale.

SEC. 27. The collector shall give public notice of the time and place of sale, and of the property to be sold, at least ten days previous to the sale, by advertisement, to be posted up in three public places in the county where such sale shall be made; and the sale shall be by public auction.

SEC. 28. If the property so distrained cannot be sold for want of bidders, the collector shall return a statement of the fact; and if the tax be assessed on real estate, such real estate shall be returned in the same manner as if the same were non-resident lands.

SEC. 29. If the property distrained shall be sold for more than the amount of tax and collection fees, the surplus shall be returned to the person in whose possession said property was when the distress was made, if no claim to such surplus be made by any other person in writing; but if any other person shall in writing claim such surplus, on the ground that the property sold belonged to him, and such claim be admitted by the person for whose tax the property was sold, the surplus shall be paid to such owner; but if such claim be denied by the person for whose tax the property was distrained, such surplus shall be deposited in the county treasury until the rights of the parties shall be determined by law.

SEC. 30. In case any person upon whom any tax may be assessed in any county for personal estate, shall have removed out of such county after the assessment and before such tax ought by law to be collected, it shall be lawful for the collector of such county to levy and collect such tax of the goods and chattels of the person so assessed in any county to which such person shall have removed or in which he shall reside.

SEC. 31. Whenever any county collector shall not be able to collect any tax on personal property on account of the absence of the person so taxed, or for any other cause, the judge of probate, if required, shall issue a new warrant to such collector for such tax, and it shall be the duty of the collector to renew his official bond; and thereupon the said warrant shall be and remain in force for six months thereafter. Provided, said bond shall not be renewed unless the tax uncollected shall exceed ten dollars.

SEC. 32. Whenever any tax which shall have been, or which may hereafter

be assessed on personal property in this Territory, shall be returned by any county collector for non-payment under the provisions of this chapter, it shall be lawful for the county collector from which any such tax is so returned in the name of such county, to sue the person or persons against whom such tax was assessed before any court of competent jurisdiction, and to have, use, and take all lawful ways and means provided by law for the collection of debts to enforce the payment of any such tax.

SEC. 33. Executions issued upon judgments rendered for any such tax, may be levied upon any property liable to be seized and sold under warrants issued for the collection of taxes by the judge of probate, and the proceedings of an officer with any such execution shall be the same in all other respects as are now directed by law.

SEC. 34. The production of any tax or assessment-roll, on the trial of any action brought for the recovery of a tax therein assessed, may, upon proof that it is the original assessment-roll or the tax-roll, with the warrant annexed, of the county named as the plaintiff in such action, be read, or used in evidence; and if it shall appear from said assessment-roll that there is a tax therein assessed against the defendant in such suit, it shall be *prima facie* evidence of the legality and regularity of the assessment of the same; and the court before whom the cause may be pending shall proceed to render judgment against the defendant, unless he shall make it appear that he has paid such tax, and no stay of execution shall be allowed on any such judgment.

SEC. 35. Such county collector shall receive the tax, or any one of the several taxes, on a part of any lot or parcel of land, on any undivided share or other interest therein, which the tax-payer will clearly define, and if the tax on the remainder of such lot or parcel of land shall remain unpaid, the collector shall enter a specification thereof in his return to the county treasurer; but if the part on which the tax is so paid shall be an individual share, the person paying the same shall state to the collector the name of the owner of such share, that it may be excepted in case of the sale for the tax on the remainder, for which purpose the collector shall enter the name of such owner in his account of arrears of taxes.

SEC. 36. If any of the taxes mentioned in the tax-roll annexed to his warrant, shall remain unpaid, and the collector shall be unable to collect the same from the owner or occupant of the premises assessed, he shall make out a statement of the taxes so remaining unpaid and due, with a full description of the premises from his tax-roll, and submit the same to the county treasurer.

SEC. 37. The county treasurer shall immediately compare such statement with the tax-roll in the hands of such collector, and if he finds it to be a true transcript from the same, he shall add to it a certificate showing that he has examined and compared such statement with the tax-roll in the hands of such collector, and found it correct; and shall file such statement so certified in his office.

SEC. 38. Upon making an affidavit, to be annexed to such statement before the county treasurer, or his deputy duly appointed, or before any officer authorized to administer oaths, that the sums mentioned in such statement remain unpaid, and that he has not, upon diligent inquiry, been

able to discover any goods or chattels, belonging to or in possession of the person charged with or liable to pay such sums, whereupon he could levy the same, the county collector shall be credited by the county treasurer with the amount thereof; and for making the return aforesaid, he shall be entitled to receive five dollars, and twenty cents per mile travel fee one way, to be allowed and paid to him by the county treasurer, together with two per cent. on all taxes returned as delinquent; but no such treasurer shall be allowed more than twenty dollars, including said two per cent., for making his returns.

SEC. 39. Upon the settlement of the amount of taxes directed to be collected by the county collector and paid to the county treasurer, such county treasurer shall endorse the bond of the county collector as paid up; which endorsement shall operate as a full discharge of the collector and his sureties from the obligation thereof, unless it shall afterwards appear that the return of such collector is false; in which case such bond shall continue in force, and such collector and his sureties shall be liable thereon for damages occasioned by such false return; and the collector shall immediately deposit his tax-roll and warrant with the county treasurer, who shall file and preserve the same in his office.

SEC. 40. The county collector or other collecting officer, on the receipt of any tax, shall give a receipt for the same, and shall note in his tax-roll the payment thereof; and if any such collector, or other collecting officer, shall wilfully return to the county treasurer as unpaid any taxes which have been paid to him, except when there is a double assessment, he shall be deemed guilty of a misdemeanor, and on conviction thereof, shall be punished by imprisonment in the county jail not exceeding one year, or by fine not exceeding five hundred dollars, or both, at the discretion of the court.

SEC. 41. If any county collector shall neglect or refuse to pay to the county treasurer the sums required by his warrant, or to account for the same as unpaid, as required by law, the county treasurer shall, within ten days after the time when such payment ought to have been made, issue a warrant under his hand directed to a coroner of the county, commanding him to levy such sum as shall remain unpaid and unaccounted for, together with his fees for collecting the same, of the goods and chattels, lands and tenements of such county collector and his sureties, and to pay the said sums to the county treasurer, and return such warrant within forty days from the date thereof.

SEC. 42. The county treasurer shall forthwith deliver such warrant to a coroner of his county, who shall immediately cause the same to be executed, and shall make return thereof to the county treasurer within the time specified for the return thereof, and pay to such treasurer the amount required by such warrant; and such coroner shall be entitled to collect and receive the same fees as are allowed by law to sheriffs on executions.

SEC. 43. If any coroner shall neglect or refuse to return any such warrant, or to pay the money collected thereon within the time limited for the return of such warrant, or shall make a false return thereof, the county treasurer shall proceed by attachment in the supreme court or district court against such coroner to collect the whole sum directed to be levied by such warrant, in the same manner and with like effect as for neglecting to return an

execution in a civil suit, and the proceedings thereon shall be the same in all respects.

SEC. 44. In case the county treasurer shall fail to collect such moneys by attachment, he shall forthwith cause a prosecution to be had against the coroner and his sureties for the sum due on such warrant, which sum, when collected, shall be paid to the county treasurer.

SEC. 45. When any county treasurer shall receive from a county collector a statement of unpaid taxes on the lands of residents or non-residents, verified according to law, such county treasurer shall enter the same at length on the books in his office provided for the purpose, and he shall make a correct transcript thereof, which shall be compared by the county recorder and filed in his office, and shall add thereto a certificate that he has examined the same and found it correct.

SEC. 46. If the taxes on any real estate assessed to a resident shall be returned unpaid, according to law, the same proceedings shall be had thereon in all respects as in cases of lands assessed as non-resident.

SEC. 47. Any person may pay the taxes on any parcel of lands returned as aforesaid, or any undivided share thereof, with interest calculated thereon from the first day of October next after the same were assessed, at the rate of thirty per cent. per annum, and the office charges, to the treasurer of the county in which the lands are situated, at any time before they are sold for taxes.

Of the Sale of Lands for Taxes, and the Conveyance and Redemption thereof.

SEC. 48. All lands returned to the county treasurer as provided by law, upon which the taxes, interest, and charges shall not be paid or cancelled, shall be subject to sale and redemption, as hereinafter provided, and shall be sold in the same county from which they were returned, or in which the lands were situated at the time such taxes were assessed.

SEC. 49. The county treasurer shall make out a statement of all lands on which the taxes shall remain due and unpaid, specifying the amount due on each parcel, and which shall also include interest until the first Monday of March next thereafter, the cost of advertising and of conveyance, calculated upon each description by dividing such charges by the whole number of descriptions. He shall prepare such statement on or before the third Monday of December next after such lands are returned to his office, and shall make a duplicate copy of such statement, and file the same in the office of the county recorder. In making such statement interest shall be calculated at the rate of twenty per cent. per annum, advertising at the rate of seventy-five cents for each description, and conveyances at the rate of two dollars each.

SEC. 50. The county treasurer shall cause each of such statements to be published in the county in which the lands therein described are situate, for eight weeks successively next previous to the first Monday of March in each year (which shall be construed to mean eight publications once a week), in one newspaper printed and published in such county, if there be one published therein; and in case there is no such newspaper printed and published

in the county, such statement shall be printed and published in an adjoining county; but if there is no such newspaper printed or published in the same or any adjoining county, such statement shall be printed and published in some other newspaper to be designated by the county treasurer.

SEC. 51. The cost of printing and publishing such statements shall not exceed seventy-five cents for each description of land so advertised; and no printer shall be paid for publishing any such statement, who shall not forward to the county treasurer within twenty days after the last publication thereof, an affidavit made by some person to whom the facts are known, stating that such publication has been made.

SEC. 52. The county treasurer shall annex to and cause to be published with each of said statements, a notice that so much of each tract or parcel of land described in said statement as will be necessary for that purpose, will be sold by the county treasurer on the first Monday of March next thereafter, at such public and convenient place at the seat of justice of the county, as the county treasurer may select, for the payment of taxes, interest, and charges thereon.

SEC. 53. On the day designated in the notice of sale, the several county treasurers shall commence the sale of those lands on which the taxes shall not have been paid as aforesaid, and shall continue the same from day to day (Sundays excepted) until so much of each parcel thereof shall be sold as shall be sufficient to pay the taxes, interest, and charges thereon.

SEC. 54. In case less than the whole of any parcel described in the statements aforesaid shall be sold for the taxes, interest, and charges thereon, the portion thereof sold shall be taken from the north side or north end of such parcel, and shall be bounded on the south by a line running parallel with the northerly line thereof, unless the same be an irregular line, in which case the portion thereof so sold shall be bounded on the south by a line running due east and west.

SEC. 55. The county treasurer may, in his discretion, require immediate payment of any person to whom any parcel of land shall be struck off, and in all cases where payment is not made in twenty-four hours, he may declare the bid cancelled, and at his discretion sell the lands again; any person so neglecting or refusing to pay any bid made by him, shall not be entitled after such neglect to have any bid made by him received by the treasurer during such sale.

SEC. 56. At the sale aforesaid, the respective county treasurers shall give to the purchasers, on the payment of their bids, a certificate in writing, describing the lands purchased and the amount paid therefor; and such certificate shall be regularly numbered, and a copy of each filed in the office of the county recorder.

SEC. 57. On the presentation of such certificate of sale to the county treasurer after the expiration of the term provided by law for the redemption of lands sold as aforesaid, he shall execute to the purchaser, his heirs or assigns, a deed of the land therein described, unless he shall have discovered that the same was improperly sold, which deed shall be *prima facie* evidence of the regularity of all the proceedings, from the valuation of the land by the assessor to the date of the deed inclusive, and of title in the purchaser.

SEC. 58. In case of the loss of such certificate of sale, the purchaser, or his legal representative or assignee, may file his affidavit of such loss, and that he was at the time of such loss the *bona fide* and legal holder thereof; and the county treasurer shall thereupon execute as aforesaid a deed for the lands described in such certificate, in the same manner as though it had been presented and surrendered. Any person who shall make an affidavit as above required, or concerning any other matter which may be filed in the office of the county treasurer, shall be liable to the penalties of perjury for any false statement made in such affidavit with intent to defraud, upon conviction thereof before a court having jurisdiction of the offence.

SEC. 59. Any person claiming any of the lands sold as aforesaid, or any interest therein, may at any time within one year next succeeding the sale, redeem any parcel of said lands, or any part or interest in the same, by paying the treasurer of the county where such lands are situated, the amount for which such parcel was sold, or such proportion thereof as the part or interest redeemed shall amount to, with interest thereon at the rate of one hundred per cent. per annum.

SEC. 60. When any land shall be redeemed as provided in the preceding section, the interest shall in all cases be computed from the day of the sale up to the end of the current quarter of the year limited for such redemption.

SEC. 61. Upon the payment of the redemption money and interest to the county treasurer as aforesaid, he shall issue duplicate certificates of redemption in the usual form, both of which certificates shall be countersigned by the county recorder, who shall make an entry of the number of each certificate, the amount for which it was given, and the name of the person paying the same, one of which certificates shall be delivered to the person making the payment, and the other shall remain in the office of the county treasurer.

SEC. 62. After the expiration of one year from the time of such sale, if not previously redeemed or cancelled, the county treasurer shall execute to the purchaser, his executor, administrator, or assigns, a deed for the premises described in his certificate of purchase, and after the expiration of two years, such deed shall be conclusive evidence of title in the purchaser; except it shall appear: First, that the property was not subject to taxation by law; and second, that the taxes for which the same was conveyed had been paid. Provided, that the limitations herein contained shall not apply to persons insane, imprisoned, or minor children, until the expiration of two years after such disability is removed, or they arrive at full age, as the case may be.

SEC. 63. Mining corporations making a report and paying a specific tax as required by law, shall not be subject to the provisions of this chapter.

SEC. 64. At any time after any lands are returned for non-payment of taxes, and before the same are conveyed by virtue of a sale thereof, the county treasurer may cancel the return or sale, as the case may be, of any particular description, by producing satisfactory evidence in writing to be filed and preserved in his office, showing: 1st. That such description was not subject to taxation by law; 2d. That the taxes for which the same was returned or sold had been previously paid; and 3d. That the party had

applied to the county treasurer to redeem the same previously to its being conveyed, and obtained his certificate that the same had not been returned or sold, as the case may be, or that the taxes thereon had been paid or cancelled.

SEC. 65. All expenses and fees incurred under the foregoing provisions of this chapter, and not therein provided for, shall be a county charge, and shall be audited and paid by the board of county commissioners the same as other claims against the county.

Concerning Poll-Tax.

SEC. 66. Each male inhabitant of this Territory over twenty-one years of age, and under sixty years of age, and not by law exempt from poll-tax, shall pay a poll-tax for the use of the Territory and county of five dollars, fifty per cent. of the net proceeds of which shall be paid into the county treasury for county purposes; the remaining fifty per cent. of the net proceeds to be paid into the county treasury for the use of the Territory: Provided, he shall pay the same to the assessor between the first Monday of March and first Monday of September in each year; and in default of paying the same to the assessor within the time specified, each such inhabitant shall pay a poll-tax of eight dollars for the use of the Territory and county, the collection of which shall be enforced by the county collector, whether the name of such inhabitant be on his tax-roll or not; and the collector shall receive one dollar for each eight dollars of poll-tax by him lawfully collected at any time from the first Monday of September to the first Monday of March in each year: Provided, that no person shall be required to pay more than five dollars, unless such poll-tax shall have been demanded of him, or unless he shall have secreted himself for the purpose of avoiding the payment of such tax.

SEC. 67. No person shall be deemed or held to have paid his poll-tax unless he be able to exhibit a receipt therefor issued from the county treasurer, or otherwise prove the payment of the same.

SEC. 68. The county treasurer shall, immediately after the passage of this chapter, for the present year (and thereafter before the first day of March of each year), cause proper blank receipts for the poll-tax of citizens provided for in sec. 66, and also of foreign miners hereinafter provided for, to be printed by the Territorial printer of a uniform appearance (changing the style thereof each year), and shall take a number thereof equal to the probable number of the inhabitants in each county liable to poll-tax and mining-tax, and shall sign and number them, or so many of them as may be required, and make an entry thereof in a book to be kept for that purpose, and thereupon deliver them to the clerk of the board of county commissioners, who shall in turn likewise sign them and make an entry thereof in a book to be kept by him for that purpose.

SEC. 69. The clerk of the board of county commissioners shall issue to the collector so many of such executed receipts for such tax from time to time as may be needed.

SEC. 70. No receipt for such tax other than those mentioned in section sixty-eight of this chapter, shall be used or given for the payment of any

such tax, and any collector who shall receive any such tax without delivering the proper receipt required by law, shall be deemed guilty of a misdemeanor for such unlawful receipt so delivered, and on conviction thereof shall be punished by imprisonment in a county jail not less than three months nor more than one year, and by fine not less than one hundred nor more than one thousand dollars for each offence.

SEC. 71. Upon receiving such executed receipts from the clerk of the board of county commissioners, the officer authorized to collect such taxes for the time being, shall give a receipt to said clerk for the same, and the said clerk shall immediately charge the same to the officer so receiving them; all such receipts for poll-taxes of citizens so delivered shall be filled out with the sum of five dollars, and five dollars shall be charged to him for each one so delivered; and all such receipts delivered to the collector after the first Monday of September in each year shall be filled out with the sum of eight dollars, and eight dollars shall be charged to him for each one so delivered; and said clerk shall immediately file with the county treasurer the receipt so taken by him from the collector. All receipts for the foreign miners' tax shall be filled out with the sums hereinafter provided to be collected of them, and shall be delivered, charged, and accounted for as required by the provisions of this chapter relating to receipts for the poll-tax of citizens.

SEC. 72. The board of county commissioners of each county shall exact an additional bond from the collector, with additional sureties, in such penal sums as the said board shall deem necessary to insure the faithful and prompt payment to the county treasurer of all moneys received by such collector for poll-tax.

SEC. 73. After the second Monday in September in each year the collector shall proceed to enforce the collection of all poll-taxes remaining unpaid in his county, receiving the proper receipts from the clerk of the board of county commissioners; and an account of the same shall be given by the clerk to the county treasurer, and the collector shall be charged therewith.

SEC. 74. To enforce the collection of poll-taxes, the collector may seize so much of every and any species of property, right, claim, or possession whatever, claimed or in the possession of any person liable to and refusing to pay his poll-tax, or in the possession of any other person, and belonging to such person so refusing to pay such poll-tax, as will be sufficient to pay such poll-tax and costs of seizure and sale, and may sell the same at any time or place upon giving a verbal notice one hour previous to such sale; and any person indebted to another liable to poll-tax, who shall neglect or refuse to pay the same, may pay the same for such other, and deduct the amount thereof for such indebtedness. The collector, after having deducted the poll-tax for which such property was sold, and the necessary fees and cost of the sale, shall return the surplus of the proceeds to the owner of the property. A delivery of the possession of the property by the collector to any purchaser at any such sale, shall be a sufficient title in the purchaser, without the execution of a deed therefor by the collector. Before paying a witness or juryman his fees of attendance, the clerk of the probate or district court or justice of the peace, as the case may be, of the county in which such witness or juryman may reside, shall require the witness or juryman demanding his fees to produce satisfactory evidence that he has paid his poll-tax; and failing to produce such evidence, the clerk or justice shall deduct the amount of his poll-tax from the amount due the witness or juryman, and pay him the

residue, if there be any, and shall, within ten days thereafter, pay over to the county treasurer the amount of tax so collected, and deliver the treasurer's receipt for the same to the collector of the county, who shall thereupon give a poll-tax receipt to such a witness or juryman; and any clerk or justice failing so to pay, shall be held liable to the penalties prescribed in section seventy of this chapter.

SEC. 75. The collector shall, on the first Monday of December in each year, settle for all poll-taxes collected by him, and shall pay over to the treasurer the amount of all poll-tax receipts which he shall have received from the clerk of the board of county commissioners (after deducting fees for collection), which he shall not then exhibit as still remaining uncollected; and on the first Monday of October in each year, the collector shall settle with the treasurer for all poll-tax receipts signed by the treasurer and delivered to him, and shall then pay over the amount of all poll-tax receipts by him received, and not then and there returned.

SEC. 76. Any person or persons who shall pass, sell, or transfer, or attempt to pass, sell, or transfer, or who shall forge or fraudulently issue any receipt or receipts for poll-tax contrary to the spirit and intention of this chapter, shall be deemed guilty of fraud, and on conviction thereof shall be punished by imprisonment in the county jail not exceeding two years.

SEC. 77. Any person not a citizen of the United States, who shall engage in any mining in this Territory (or in any other business connected therewith), shall pay an annual poll-tax of twenty-four dollars, and in that proportion, if he shall be engaged as aforesaid a less time than one year, for the time he shall be so engaged, which shall be collected quarterly by the county collector, in the manner provided in sections 73 and 74 of this chapter, and who shall give proper receipts therefor; provided this section shall not apply to such laborers as are hired in the mining or reduction works of citizens on mineral lands or deposits, and who have no interest, direct or indirect, therein.

SEC. 78. Hereafter, before any certificate or notice of any claim to, or conveyance of any mineral lands, lodes, ledges, or placers in this Territory, of any person not a citizen of the United States, shall be recorded by any recorder or register, clerk, or other recording officer of any county, or of any mining or mineral district, or association purporting to be such in this Territory, such person shall present to such recorder, register, clerk, or other officer, a receipt from the county collector, or other officer authorized to collect such taxes, that he has paid the full sum of twenty-four dollars as such poll-tax for the year last preceding, which receipt shall be recorded with such conveyance or other evidence of claim.

And any such certificate or other evidence of claim of any such person, or conveyance to or from such person, who shall not pay said tax and comply with the provisions of this chapter, shall be void; and no action shall be maintained in any court or place of this Territory, and under the laws thereof, to enforce such claim or other interest.

CHAPTER XXXIV.

Of the Distribution, Custody, and Application of the Public Moneys.

SEC. 1. All moneys paid into the Territorial treasury or received therein, and all moneys paid into or received into any county treasury under any provisions of law, shall be paid, appropriated, and applied in the manner provided in this chapter, unless otherwise by law specially applied.

SEC. 2. All moneys arising under any provisions of law applicable to the support of common schools or the university; all taxes paid by mining corporations or associations, companies or individuals, engaged in mining, under the provisions of law; the proceeds of all lands and property belonging to the Territory, and the moneys accruing or arising from the interest, rents, issues, and profits thereof; fifty per centum of the moneys collected for licenses, fifty per centum of the moneys collected for poll-tax, and fifty per centum of the net proceeds of all the moneys collected for fines, penalties, and forfeitures—shall be paid into the Territorial treasury for Territorial purposes.

SEC. 3. Whenever, by the provisions of law, any of the moneys mentioned in the preceding section shall be paid into any county treasury, the treasurer of such county shall credit the same to the Territorial treasury, and shall not use or apply the same to any use or purpose whatever; but at such times as shall be fixed by law, or at any other time upon the order or demand of the Territorial treasurer, he shall without delay pay the same over to him; and at any time when such moneys are so paid, they shall be accompanied by a brief statement of the amount so paid, and on what particular account any, and what, portion was received and paid by him.

SEC. 4. Of the moneys so received by the Territorial treasurer, they shall be applied as provided by law to the following purposes, that is to say:—

1. Those received on account of common schools, to the common school fund.
2. Those received on account of the university, to the university fund.
3. Those received on account of mining corporations, companies, or individual miners, sixty per centum shall be paid to the order of the governor, to be used as provided by law for military and other purposes of defence and protection.
4. Of the moneys received on account of fines, penalties, and forfeitures, one-half shall be applied to increase the Territorial library.

SEC. 5. All other moneys, not otherwise specially applied, and the balances of the several funds enumerated in the preceding section, and not therein applied, shall constitute a fund, to be denominated the general fund, and shall be used and applied to such purposes as shall be provided by law.

SEC. 6. All taxes collected upon the real and personal property of the several counties, and all public moneys arising from any other source; the balances of all funds enumerated in the preceding sections of this chapter, and not therein specially appropriated and applied; and all other public moneys accruing under the provisions of law, and not so applied, shall be

paid into the treasury of the proper county, for such county purposes as shall be provided by law.

SEC. 7. Of the moneys so paid into the county treasury, there shall be appropriated and applied:

1. One-fourth part of the moneys arising from fines, penalties, and forfeitures, and belonging to the county, shall be applied to the purchase of a district law library, under the direction of the district judge, and upon whose order such money shall be paid, and under whose control the said library shall remain; but the same shall be the property of the proper district or county, as the case may be.
2. Of the moneys collected on account of licenses, one-fourth part belonging to the county shall constitute a "poor fund" for the relief of infirm, poor, and indigent persons, to be drawn and used as provided by law.

SEC. 8. All other moneys received and retained by the county treasurer as the moneys of the county, shall constitute a general fund applicable to county purposes under the provisions of law.

CHAPTER XXXV.

Of the Limitations of Actions.

SEC. 1. Civil actions can only be commenced within the periods prescribed in this act, after the cause of action shall have accrued, except where a different limitation is prescribed by statute.

SEC. 2. When the cause of action has already accrued, the party entitled, and those claiming under him, shall have, after the passage of this chapter, the whole period herein prescribed in which to commence an action.

SEC. 3. No action for the recovery of real property, or for the recovery of the possession thereof, shall be maintained, unless it appear that the plaintiff, his ancestor, predecessor, or grantor, was seized or possessed of the premises in question, within five years before the commencement of such action.

SEC. 4. No cause of action, or defence to an action founded upon the title to real property, or to rents or services out of the same, shall be effectual, unless it appear that the person prosecuting the action, or making the defence, or under whose title the action is prosecuted or the defence is made, or the ancestor, predecessor, or grantor of such person, was seized or possessed of the premises in question, within five years before the commencement of the act in respect to which such action is prosecuted or defence made.

SEC. 5. No entry upon real estate shall be deemed sufficient or valid as a claim, unless an action be commenced thereupon within one year after making such entry, and within five years from the time when the right to make such entry descended or accrued.

SEC. 6. In every action for the recovery of real property, or the possession thereof, the person establishing a legal title to the premises shall be presumed to have been possessed thereof, within the time prescribed by law, and the occupation of such premises by any other person shall be deemed to have been under and in subordination to the legal title, unless it appear that such premises have been held and possessed adversely to such legal title, for five years before the commencement of such action.

SEC. 7. Whenever it shall appear that the occupant, or those under whom he claims, entered into the possession of premises, under claim of title, exclusive of any other right, founding such claim upon a written instrument as being a conveyance of the premises in question, or upon the decree or judgment of a competent court, and that there has been a continued occupation and possession of the premises included in such instrument, decree, or judgment, or of some part of such premises, under such claim for five years, the premises so included shall be deemed to have been held adversely, except that when the premises included consist of a tract divided into lots, the possession of one lot shall not be deemed a possession of any other lot of the same tract.

SEC. 8. For the purpose of constituting an adverse possession by any person claiming a title founded upon a written instrument, or a judgment or decree, land shall be deemed to have been possessed and occupied in the following cases: 1st. Where it has been usually cultivated and improved. 2d. Where it has been protected by a substantial inclosure. 3d. Where (although not inclosed) it has been used for the supply of fuel, or of fencing timber for the purposes of husbandry; or for the use of pasturage, or for the ordinary use of the occupant. 4th. When a known lot or single farm has been partly improved, the portion of such farm or lot that may have been left not cleared, or not inclosed according to the usual course and custom of the adjoining country, shall be deemed to have been occupied for the same length of time as the part improved and cultivated.

SEC. 9. When it shall appear that there has been an actual continued occupation of premises, under a claim of title, exclusive of any other right, but not founded upon a written instrument, or a judgment or decree, the premises so actually occupied, and no other, shall be deemed to have been held adversely.

SEC. 10. For the purpose of constituting an adverse possession by a person claiming title not founded upon a written instrument, judgment, or decree, land shall be deemed to have been possessed and occupied in the following cases only: 1. Where it has been protected by a substantial inclosure; 2. Where it has been usually cultivated or improved.

SEC. 11. Whenever the relation of landlord and tenant shall have existed between any persons, the possession of the tenant shall be deemed the possession of the landlord until the expiration of five years from the termination of the tenancy, or where there has been no written lease, until the expiration of five years from the time of the last payment of rent, notwithstanding that such tenant may have acquired another title, or may have claimed to hold adversely to his landlord. But such presumptions shall not be made after the periods herein limited.

SEC. 12. The right of a person to the possession of any real property

shall not be impaired or affected by a descent being cast in consequence of the death of a person in possession of such property.

SEC. 13. If a person entitled to commence any action for the recovery of real property, or to make an entry or defence founded on the title to real property, or to rents or services out of the same, be, at the time such title shall first descend or accrue, either: 1. Within the age of twenty-one years; or, 2. Insane; or, 3. Imprisoned on a criminal charge, or in execution upon conviction of a criminal offence for a term less than for life; or, 4. A married woman; the time during which such disability shall continue, shall not be deemed any portion of the time in this act limited for the commencement of such action, or the making of such entry or defence, but such action may be commenced, or entry or defence made, within the period of five years after such disability shall cease, or after the death of the person entitled, who shall die under such disability; but such action shall not be commenced, or entry or defence made after that period.

SEC. 14. Actions, other than those for the recovery of real property, can only be commenced as follows: Within five years: An action upon a judgment or decree of any court of the United States, or of any State or Territory within the United States. Within four years: An action upon any contract, obligation, or liability, founded upon an instrument of writing, except those mentioned in the preceding section. Within three years: 1. An action upon a liability created by statute, other than a penalty or forfeiture; 2. An action for trespass upon real property; 3. An action for taking, detaining, or injuring any goods or chattels, including actions for the specific recovery of personal property; 4. An action for relief on the ground of fraud, the cause of action in such case not to be deemed to have accrued until the discovery, by the aggrieved party, of the facts constituting the fraud. Within two years: 1. An action upon a contract, obligation, or liability, not founded upon an instrument of writing, except an action on an open account for goods, wares, and merchandise, and an action for any article charged in a store account; 2. An action against a sheriff, coroner, or constable, upon the liability incurred by the doing of an act in his official capacity, and in virtue of his office, or by the omission of an official duty, including the non-payment of money collected upon an execution. But this section shall not apply to an action for an escape. Within one year: 1. An action upon a statute for a penalty or forfeiture, where the action is given to an individual, or to an individual and the Territory, except where the statute imposing it prescribes a different limitation; 2. An action for libel, slander, assault, battery, or false imprisonment; 3. An action upon a statute for a forfeiture or penalty to the people of this Territory; 4. An action against a sheriff, or other officer, for the escape of a prisoner arrested or imprisoned on civil process; 5. An action on an open account for goods, wares, and merchandise sold and delivered; 6. An action for any article charged in a store account.

SEC. 15. In an action brought to recover a balance due upon a mutual, open, and current account, where there have been reciprocal demands between the parties, the cause of action shall be deemed to have accrued from the time of the last item proved in the account on either side.

SEC. 16. An action for relief, not hereinbefore provided for, must be commenced within four years after the cause of action shall have accrued.

SEC. 17. The limitations prescribed in this chapter shall apply to actions brought in the name of the Territory, or for the benefit of the Territory, in the same manner as to actions by private parties.

SEC. 18. An action shall be deemed to be commenced within the meaning of this act when the complaint has been filed in the proper court.

SEC. 19. If, when the cause of action shall accrue against a person, he is out of the Territory, the action may be commenced within the term herein limited, after his return to the Territory—and if, after the cause of action shall have accrued, he depart the Territory, the time of his absence shall not be part of the time limited for the commencement of the action.

SEC. 20. If a person, entitled to bring an action mentioned in the last preceding chapter, except for a penalty or forfeiture, or against a sheriff or other officer for an escape, be, at the time the cause of action accrued, either —1st, within the age of twenty-one years; or, 2d, insane; or, 3d, imprisoned on a criminal charge, or in execution under the sentence of a criminal court for a term less than his natural life; or, 4th, a married woman—the time of such disability shall not be a part of the time limited for the commencement of the action.

SEC. 21. If a person entitled to bring an action die before the expiration of the time limited for the commencement thereof, and the cause of action survive, an action may be commenced by his representatives after the expiration of that time, and within six months from his death. If a person against whom an action may be brought die before the expiration of the time limited for the commencement thereof, and the cause of action survives, an action may be commenced against his executors or administrators after the expiration of that time, and within one year after the issuing of letters testamentary or of administration.

SEC. 22. When a person shall be an alien subject or citizen of a country at war with the United States, the time of the continuance of the war shall not be a part of the period limited for the commencement of the action.

SEC. 23. If an action shall be commenced within the time prescribed therefor, and a judgment therein for the plaintiff be reversed on appeal, the plaintiff, or—if he die, and the cause of action survive—his heirs or representatives may commence a new action within one year after reversal.

SEC. 24. When the commencement of an action shall be stayed by injunction or statutory prohibition, the time of the continuance of the injunction or prohibition shall not be part of the time limited for the commencement of the action.

SEC. 25. No person shall avail himself of a disability, unless it existed when his right of action accrued.

SEC. 26. When two or more disabilities coëxist at the time the right of action accrues, the limitation shall not attach until they all be removed.

SEC. 27. The preceding sections of this chapter shall not affect actions against directors or stockholders of a corporation to recover a penalty or forfeiture imposed, or to enforce a liability created by law; but such actions

must be brought within three years after the discovery by the aggrieved party of the facts upon which the penalty or forfeiture attached, or the liability was created.

SEC. 28. No acknowledgment or promise shall be sufficient evidence of a new or continuing contract, whereby to take the case out of the operation of this statute, unless the same be contained in some writing signed by the party to be charged thereby.

SEC. 29. An action upon any contract, obligation, or liability for the payment of money, founded upon an instrument of writing executed out of this Territory, can only be commenced as follows: First, within one year, when more than two and less than five years have elapsed since the cause of action accrued; second, within six months, when more than five years have elapsed since the cause of action accrued.

SEC. 30. When the cause of action has arisen in another State or a Territory of the United States, or in a foreign country, and by the laws thereof an action thereon cannot there be maintained against a person by reason of the lapse of time, no action thereon shall be maintained against him in this Territory.

CHAPTER XXXVI.

Of Fraudulent Conveyances and Contracts.

SEC. 1. Every conveyance of any estate, or interest in lands, or the rents and profits of lands, and every charge upon lands, or the rents and profits thereof, made or created with the intent to defraud prior or subsequent purchasers for a valuable consideration of the same lands, rents, or profits, as against such purchasers, shall be void.

SEC. 2. No such conveyance or charge shall be deemed fraudulent in favor of a subsequent purchaser, who shall have legal notice thereof at the time of his purchase, unless it shall appear that the grantee in such conveyance, or person to be benefited by such charge, was privy to the fraud intended.

SEC. 3. Every conveyance or charge of or upon any estate or interest in lands, containing any provision for the revocation, determination, or alteration of such estate or interest, or any part thereof, at the will of the grantor, shall be void as against subsequent purchasers from such grantor for a valuable consideration, of any estate or interest so liable to be revoked or determined, although the same be not directly revoked, determined, or altered by such grantor by virtue of the power reserved or expressed in such prior conveyance or charge.

SEC. 4. When a power to revoke a conveyance of lands, or the rents and profits thereof, and to re-convey the same, shall be given to any person other than the grantor in such conveyance, and such person shall thereafter convey the same lands, rents, or profits, to a purchaser for a valuable consideration, such subsequent conveyance shall be valid in the same manner

and to the same extent as if the power of revocation were recited therein, and the intent to revoke the former conveyance expressly declared.

SEC. 5. If a conveyance to a purchaser, under either of the two last preceding sections, shall be made before the person making the same shall be entitled to execute his power of revocation, it shall nevertheless be valid from the time the power of revocation shall actually vest in such person, in the same manner and to the same extent as if then made.

SEC. 6. No estate or interest in lands, other than leases for a term not exceeding one year, nor any trust or power over or concerning lands, or in any manner relating thereto, shall hereafter be created, granted, assigned, surrendered, or declared, unless by act or operation of law, or by deed or conveyance in writing, subscribed by the party creating, granting, assigning, surrendering, or declaring the same, or by his lawful agent thereunto authorized by writing.

SEC. 7. The preceding section shall not be construed to affect in any manner the power of a testator in the disposition of his real estate by a last will and testament, nor to prevent any trust from arising or being extinguished by implication or operation of law.

SEC. 8. Every contract for the leasing for a longer period than one year, or for the sale of any lands, or any interest in lands, shall be void, unless the contract, or some note or memorandum thereof expressing the consideration, be in writing, and be subscribed by the party by whom the lease or sale is to be made.

SEC. 9. Every instrument required to be subscribed by any person, under the last preceding section, may be subscribed by the agent of such party, lawfully authorized.

SEC. 10. Nothing contained in this chapter shall be construed to abridge the powers of courts to compel the specific performance of agreements, in cases of part performance of such agreements.

Of Fraudulent Conveyances and Contracts relative to Goods, Chattels, and Things in Action.

SEC. 11. All deeds of gift, all conveyances, and all transfers or assignments, verbal or written, of goods, chattels, or things in action, made in trust for the use of the person making the same, shall be void as against the creditors existing or subsequent of such person.

SEC. 12. In the following cases, every agreement shall be void, unless such agreement, or some note or memorandum thereof, expressing the consideration, be in writing, and subscribed by the party charged therewith: 1. Every agreement that by the terms is not to be performed within one year from the making thereof; 2. Every special promise to answer for the debt, default, or miscarriage of another; 3. Every agreement, promise, or undertaking made upon consideration of marriage, except mutual promises to marry.

SEC. 13. Every contract for the sale of any goods, chattels, or things in

action, for the price of one hundred dollars or over, shall be void, unless, 1st, a note or memorandum of such contract be made in writing, and be subscribed by the parties to be charged forthwith; or, 2d, unless the buyer shall accept or receive part of such goods, or the evidences, or some of them, of such things in action; or, 3d, unless the buyer shall at the time pay some part of the purchase money.

SEC. 14. Whenever any goods shall be sold at auction, and the auctioneer shall, at the time of sale, enter in a sale book, a memorandum, specifying the nature and price of the property sold, the terms of the sale, the name of the purchaser, and the name of the person on whose account the sale is made; such memorandum shall be deemed a note of the contract of sale within the meaning of the last section.

SEC. 15. Every sale made by a vendor of goods and chattels in his possession, or under his control, and every assignment of goods and chattels, unless the same be accompanied by an immediate delivery, and be followed by an actual and continued change of possession of things sold or assigned, shall be conclusive evidence of fraud as against the creditors of the vendor, or the creditors of the person making such assignment, or subsequent purchasers in good faith.

SEC. 16. The term "creditors," as used in the last section, shall be construed to include all persons who shall be creditors of the vendor or assignor, at any time while such goods and chattels shall remain in his possession or under his control.

SEC. 17. No mortgage of personal property hereafter made shall be valid against any other persons than the parties thereto, unless possession of the mortgaged property be delivered to and retained by the mortgagee.

SEC. 18. Nothing contained in the last three sections shall be construed to apply to contracts of bottomry, respondentia, nor assignments or hypothecations of vessels or goods at sea, or in foreign states, or without this Territory: Provided, the assignee or mortgagee shall take possession of such vessel or goods as soon as may be after the arrival thereof within this Territory.

SEC. 19. Every instrument required by any of the provisions of this chapter to be subscribed by any party, may be subscribed by the lawful agent of such party.

Miscellaneous Provisions.

SEC. 20. Every conveyance or assignment, in writing or otherwise, of any estate or interest in lands, or in things in action, or of any rents or profits issuing therefrom, and every charge upon lands, goods, or things in action, or upon the rents and profits thereof, made with the intent to hinder, delay, or defraud creditors or other persons of their lawful suits, damages, forfeitures, debts, or demands, and every bond or other evidence of debt given, suits commenced, decree or judgment suffered, with the like intent as against the persons hindered, delayed, or defrauded, shall be void.

SEC. 21. Every grant or assignment of any existing trust in land, goods,

or things in action, unless the same shall be in writing, subscribed by the person making the same, or by his agent lawfully authorized, shall be void.

SEC. 22. Every conveyance, charge, instrument, or proceeding, declared to be void by the provisions of this chapter, as against creditors or purchasers, shall be equally void as against the heirs, successors, personal representatives, or assigns of creditors or purchasers.

SEC. 23. The question of fraudulent intent in all cases arising under the provisions of this chapter, shall be deemed a question of fact, and not of law; nor shall any conveyance or charge be adjudged fraudulent as against creditors or purchasers, solely on the ground that it was not founded on a valuable consideration.

SEC. 24. The provisions of this chapter shall not be construed in any manner to affect or impair the title of a purchaser for a valuable consideration, unless it shall appear that such purchaser had previous notice of the fraudulent intent of his immediate grantor, or of the fraud rendering void the title of such grantor.

SEC. 25. The term "lands," as used in this chapter, shall be construed as coëxtensive in meaning with lands, tenements, and hereditaments, and the terms "estate and interest in lands," shall be construed to embrace every estate and interest, present and future, vested and contingent, in lands, as above defined.

SEC. 26. The term "conveyance," as used in this chapter, shall be construed to embrace every instrument in writing, except a last will and testament, whatever may be its form and by whatever name it may be known in law, by which any estate or interest in lands is created, aliened, assigned, or surrendered.

CHAPTER XXXVII.

Of Exemptions of Real Estate.

SEC. 1. The homestead, consisting of a quantity of land, together with the dwelling-house thereon and its appurtenances, not exceeding in value the sum of five thousand dollars, to be selected by the owner thereof, shall not be subject to forced sale on execution or on any other final process from a court, for any debt or liability contracted or incurred after thirty days from the passage of this act, or if contracted or incurred at any time in any other place than in this Territory.

SEC. 2. Such exemption shall not extend to any mechanic's, laborer's, or vendor's lien, or to any mortgage lawfully obtained; but no mortgage, sale, or alienation of any kind whatever of such land by the owner thereof, if a married man, shall be valid without the signature of the wife to the same, acknowledged by her separately and apart from her husband: Provided, that such signature and acknowledgment shall not be necessary to

the validity of any mortgage upon the land executed before it became the homestead of the debtor, or executed to secure the payment of the purchase money.

SEC. 3. Whenever any levy shall be made upon the land or tenements of a householder, whose homestead has not been selected and set apart, such householder may notify the officer at the time of making such levy of what he regards as his homestead, with a description thereof, and the remainder alone shall be subject to sale under such levy.

SEC. 4. If the plaintiff in execution shall be dissatisfied with the lands and tenements selected and set apart as aforesaid, the matter shall be submitted to two appraisers, one to be selected by the plaintiff and the other by the defendant, who shall determine whether such land and tenements exceed in value the sum of five thousand dollars. If the appraisers so chosen cannot agree, they shall appoint a third person to decide between them. If they cannot agree in the choice of a third person, he shall be named by the officer.

SEC. 5. If the land selected as a homestead consist of a lot containing twenty-five hundred square yards or less, and the appraisers shall certify to the officer that such lot, together with the improvements thereon, exceeds in value the sum of five thousand dollars, the said officer may proceed to sell such excess or the whole at the option of the defendant in execution, in the manner provided in other cases for the sale of real property under execution. In case the excess only is sold, then such proceeds shall be applied to the satisfaction of the execution; and in case the whole amount of property is sold, five thousand dollars of the proceeds of such sale shall be paid to the defendant in execution, and the excess shall be applied to the satisfaction of the execution: Provided, that no bid shall be received for a less sum than five thousand dollars.

SEC. 6. In any case where the land selected and claimed as a homestead shall exceed in extent twenty-five hundred square yards, if the appraisers be of opinion that such land, together with the dwelling-house and its appurtenances, exceed in value the sum of five thousand dollars, they shall set apart a portion thereof, in a compact form, including the dwelling-house if possible, as the homestead; such homestead shall be, as near as may be, of the value of five thousand dollars, and the said appraisers shall cause the same to be surveyed. The expenses of such survey shall be chargeable on the execution and collected thereon.

SEC. 7. After the survey shall have been made, the officer making the levy may sell the property levied upon and not included in the survey, as in cases of other sales of real estate under execution; and in giving a deed for the same he may describe it according to his original levy, excepting therefrom, by metes and bounds, according to the certificate of survey, the quantity set apart as aforesaid in this chapter.

SEC. 8. Before proceeding to act, the appraisers mentioned in this act shall be sworn by the officer to do justice between the parties. Their decision shall be delivered to the officer, shall be returned by him with the execution, and shall be conclusive between the parties, and for the protection of the officer against all liability. If the value of the real estate or personal property, as the case may be, do not exceed the amount made

exempt by this chapter, the cost of the proceedings shall be paid by the plaintiff in execution; otherwise, by the defendant.

SEC. 9. The homestead and other property exempt from forced sale, upon the death of the head of the family, shall be set apart by the probate court for the benefit of the surviving wife and his own legitimate children, and in case of no surviving wife or his own legitimate children, for the next heirs-at-law: Provided, that the exemption of a homestead as provided in this chapter shall not extend to unmarried persons, except when they have charge of minor brothers or sisters, or both, or brothers' or sisters' minor children, or a mother, or unmarried sisters living in the house with them.

SEC. 10. Nothing in this chapter shall be so construed as exempting any real or personal property from sales for taxes.

Exemption of Personal Property.

SEC. 11. The following property shall be exempt from levy and sale under any execution, or upon any other final process of a court:

1. All spinning-wheels, weaving-looms, with the apparatus, and stoves put up and kept for use in any dwelling-house;
2. A seat, pew, or slip occupied by such person or family in any house or place of public worship;
3. All cemeteries, tombs, and rights of burial, while in use as repositories of the dead;
4. All arms and accoutrements kept for use; all wearing apparel of every person or family;
5. The library and school books of every individual and family, not exceeding one hundred and fifty dollars, and all family pictures;
6. To each householder, ten goats or sheep, with their fleeces; and the yarn or cloth manufactured from the same; two cows, five swine, and provisions and fuel for the comfortable subsistence of such householder and family for six months;
7. To each householder, all household goods, furniture, and utensils, not exceeding in value six hundred dollars;
8. The tools, implements, materials, stock, apparatus, team, vehicle, horses, harness, or other things to enable any person to carry on the profession, trade, occupation, or business in which he is wholly or principally engaged, not exceeding in value six hundred dollars;
9. One sewing-machine and one musical instrument.
10. A sufficient quantity of hay, grain, feed, and roots for properly keeping for three months the animals in the several subdivisions of this section exempted from execution, and any chattel-mortgage, bill of sale, or other lien created on any part of the property above described, except such as is mentioned in the eighth subdivision of this section, shall be void, unless such mortgage, bill of sale, or lien, be signed by the wife of the party making such mortgage or lien (if he have one).

SEC. 12. When a levy shall be made upon property of any class or species which is exempt by law from execution to a specified amount or value, the officer levying such execution may make an inventory of the whole of such property belonging to the person against whom the execution shall be issued, and cause the same to be appraised at its cash value, by two disin-

terested freeholders of the county where the property may be, on oath, to be administered by him to such appraisers.

SEC. 13. Upon such inventory and appraisal being completed, the defendant in execution, or his authorized agent, may select from such inventory an amount of such property not exceeding, according to such appraisal, the amount or value exempted by law from execution; but if neither such defendant nor his agent shall appear and make such selection, the officer shall make the same for him.

SEC. 14. The appraisers mentioned in the twelfth section of this chapter, shall be entitled to fifty cents each for their services, and six cents per mile for travelling, in going only, for which the plaintiff in the execution shall be liable to them, and the amount of their travel and fees shall be collected upon the execution.

SEC. 15. Whenever the defendant in an execution shall have cows, sheep, swine, or other animals or articles, some of which are exempt by law from sale on execution, and some of which are not so exempt, the officer may take all of such horses, cows, sheep, swine, or other animals or articles into his possession, and the defendant or his authorized agent may, immediately, on being notified of the levy, select so many thereof as are exempt by law from execution; but if the defendant be absent, or neglect to make such selection on being notified, the officer shall make the selection for him.

SEC. 16. All moneys paid to any defendant in an execution, or other final process of a court, under the provisions of section five of this chapter, shall be exempt from any execution, order, decree, or other process issued from any court.

CHAPTER XXXVIII.

Of Attorneys and Counsellors-at-Law.

SEC. 1. Any white male citizen of the age of twenty-one years, of good moral character, and who possesses the necessary qualifications of learning and ability, shall be entitled to admission as attorney and counsellor in all the courts of this Territory by the supreme court.

SEC. 2. Every applicant for admission as attorney and counsellor shall produce satisfactory testimonials of good moral character, and undergo a strict examination in open court as to his qualifications by one of the judges of the supreme court of this Territory.

SEC. 3. If upon examination he be found duly qualified, the court shall admit him as attorney and counsellor in all the courts of this Territory, and shall direct an order to be entered to that effect upon its records, and that a certificate of such record be given to him by the clerk of the court, which certificate shall be his license.

SEC. 4. The district courts of this Territory are authorized to admit as attorney and counsellor in their respective courts any white male citizen of

the age of twenty-one years, and of good moral character, who possesses the requisite qualifications on similar testimonials and like examinations as are required by the preceding sections for admission by the supreme court, and may direct their clerks to give a certificate of such admission, which certificate shall be his license to practise in all courts of this Territory.

SEC. 5. Every person, on his admission, shall take an oath or affirmation to support the constitution of the United States and of the Territory, and to discharge the duties of attorney and counsellor to the best of his knowledge and ability. A certificate of such oath or affirmation shall be endorsed on the license.

SEC. 6. The examination may be dispensed with in the case of a person who has been admitted attorney and counsellor in the highest courts of a sister State; his affidavit of such admission, or his license showing the same, shall be deemed sufficient to entitle him to admission.

SEC. 7. Each clerk shall keep a roll of attorneys and counsellors of the court of which he is clerk, which shall be a record of the court.

SEC. 8. If any person shall practise law in any court except a justice's or recorder's court without having received a license as attorney and counsellor, he shall be deemed guilty of a contempt of court, and punished as in other cases of contempt.

SEC. 9. An attorney and counsellor shall have authority: 1st. To bind his client in any of the steps of an action or proceeding by his agreement filed with the clerk, or entered upon the minutes of the court, and not otherwise; 2d. To receive money claimed by his client in an action or proceeding, during the pendency thereof, or within one year after judgment; and upon the payment thereof, and not otherwise, to discharge the claim or acknowledge satisfaction of the judgment.

SEC. 10. The attorney in an action or special proceeding may be changed at any time before judgment or final determination, as follows: 1st. Upon his own consent, filed with the clerk, or entered upon the minutes; 2d. Upon the order of the court or judge thereof, on the application of the client.

SEC. 11. When an attorney is changed as provided in the last section, written notice of the change and of the substitution of a new attorney, or of the appearance of the party in person, shall be given to the adverse party; until then, he shall be bound to recognise the former attorney.

SEC. 12. When an attorney dies, or is removed or suspended, or ceases to act as such, a party to an action for whom he was acting as attorney shall, before any further proceeding be had against him, be required by the adverse party, by written notice, to appoint another attorney, or to appear in person.

SEC. 13. An attorney and counsellor may be removed or suspended by the supreme court or district court, and by no other court in the Territory, for either of the following causes, arising after his admission to practice: 1st. Upon his being convicted of felony or misdemeanor, involving moral turpitude, in either of which cases the record of his conviction shall be con-

clusive evidence; 2d. For wilful disobedience or violation of the order of a court, requiring him to do or forbear an act connected with or in the course of his profession.

SEC. 14. In case of the conviction of an attorney or counsellor of a felony, or misdemeanor involving moral turpitude, the clerk of the court in which the conviction was had, shall within thirty days thereafter transmit to the supreme court a certified copy of the record of conviction.

SEC. 15. The proceedings to remove or suspend an attorney and counsellor under the first subdivision of section thirteenth, shall be taken by the court on the record, on the receipt of the certified copy of the record of conviction; the proceedings under the second subdivision of section thirteenth may be taken by the court for matters within its knowledge, or may be taken upon the information of another.

SEC. 16. If the proceedings be upon the information of another, the accusation shall be in writing, and shall be presented to the court.

SEC. 17. The accusation shall state the matters charged, and shall be verified by the oath of the person making it, or some other person, to the effect that the charges therein contained are true.

SEC. 18. After receiving the accusation the court shall, if in its opinion the case require it, make an order requiring the accused to appear and answer the accusation at a specified time, in the same or subsequent term, and shall cause a copy of the order and of the accusation to be served upon the accused within a prescribed time, before the day appointed in the order.

SEC. 19. The accused must appear at the time appointed in the order and answer the accusation, unless for sufficient cause the court assign another day for that purpose; if he do not appear, the court may proceed and determine the accusation in his absence.

SEC. 20. The accused may answer to the accusation, either by objecting to the sufficiency or by denying its truth.

SEC. 21. If he object to the sufficiency of the accusation, the objection shall be in writing, but need not be in any specific form; it being sufficient if it present intelligibly the grounds of the objection. If he deny the truth of the accusation, the denial may be oral and without oath, and shall be entered upon the minutes.

SEC. 22. If an objection to the sufficiency of the accusation be not sustained, the accused shall answer forthwith.

SEC. 23. If the accused plead guilty, or refuse to answer the accusation, the court shall proceed to judgment of removal or suspension. If he deny the matters charged, the court shall immediately, or at such time as it may appoint, proceed to try the accusation.

SEC. 24. The court may in its discretion order a reference to a committee to take depositions in the matter, and to report to the court before proceeding to try the accusation.

SEC. 25. Upon conviction, in cases arising under the first subdivision of section thirteenth, the judgment of the court shall be, that the name of the party be stricken from the roll of attorneys and counsellors of the court, and he be precluded from practising as such attorney or counsellor in all the courts of this Territory; and upon conviction, in cases under the second subdivision of section thirteenth, the judgment of the court may be according to the gravity of the offence charged—deprivation of the right to practise as attorneys or counsellors in the courts of this Territory permanently, or for a limited period.

SEC. 26. Every person admitted to practise as an attorney and counsellor-at-law shall, at the time of such admission, pay to the clerk of the court the sum of twenty dollars, which shall be appropriated, under the direction of the court, to the purchase of law books for the Territorial or district law library.

CHAPTER XXXIX.

Of Commissioners of Deeds in other States and Territories.

SEC. 1. That the governor be hereby authorized to name, appoint, and commission one or more commissioners in each, or such of the other States or Territories of the United States, or in the District of Columbia, as he may deem expedient; which commissioners shall continue in office during the pleasure of the governor, and shall have authority to take acknowledgment and proof of the execution of any deed, mortgage, or other conveyance of any land, tenements, or hereditaments, lying and being in this Territory; any contract, letter of attorney, or any other writing under seal, to be used and recorded in this Territory; and such acknowledgment or proof taken or made in the manner directed by the laws of this Territory, and certified by any one of said commissioners before whom the same be taken or made, under his seal, which certificate shall be endorsed on said deed or instrument aforesaid, shall have the same force and effect, and be as good and valid in law for all purposes, as if the same had been taken or made before any officer authorized to take such acknowledgment residing in this Territory.

SEC. 2. Every commissioner appointed by virtue of this act, shall have full power and authority to administer an oath or affirmation to any person who shall be willing and desirous to make such oath or affirmation before him, and such affidavit or affirmation made before such commissioner shall, and is hereby declared to be, as good and effectual, to all intents and purposes, as if taken by any officer authorized to administer oaths resident in this Territory; Provided, that wilful and false swearing in taking any such oath or affirmation would, by the laws of the State wherein the same shall be made, be deemed perjury.

SEC. 3. Every commissioner appointed as aforesaid, before he shall proceed to perform any duty under and by virtue of this chapter, shall take and subscribe an oath or affirmation before a justice of the peace, or some officer authorized by law to administer oaths, in the city or county in which

such commissioner shall reside, well and faithfully to execute and perform all the duties of such commissioner, under and by virtue of the laws of this Territory, which oath or affirmation shall be filed in the office of the secretary of this Territory.

SEC. 4. A copy of this chapter shall accompany each commission.

CHAPTER XL.

Of Notaries Public.

SEC. 1. The governor may appoint one or more notaries public in each county, who shall hold their offices respectively for four years, unless sooner removed by the governor. Whenever the governor shall appoint a notary public, the secretary of the Territory shall transmit his commission to the clerk of the district court of the county for which such notary was appointed, and the district clerk, on receiving such commission, shall give notice thereof to the person so appointed.

SEC. 2. The person so appointed shall, before entering upon the duties of his office, and within twenty days after receiving notice of his appointment, appear before the district clerk and take the oath of office prescribed by the law, and the said clerk shall file and preserve the same in his office.

SEC. 3. Each notary public shall also, before entering upon the duties of his office, and within the time limited for filing his official oath, give bond to this Territory, with one or more sureties, to be approved by the district clerk, in the penal sum of one thousand dollars, the condition of which bond shall be that such notary shall duly and faithfully discharge the duties of his office; and he shall file the same with said clerk.

SEC. 4. Upon the filing of the official oath and bond, as required in the two next preceding sections, the clerk shall deliver to the person so appointed the commission received by him for such person, and shall thereupon give notice to the secretary of the Territory of the filing of such oath and bond, and of the time of filing the same.

SEC. 5. Notaries public shall have authority to take the proof and acknowledgments of deeds, to administer the oaths and take affidavits in any matter or cause pending, or to be commenced or moved in any court of this Territory; to demand acceptance of foreign and inland bills of exchange, and of promissory notes, and to protest the same for non-acceptance or non-payment, as the case may require; and to exercise such other powers and duties as by the law of nations, and according to commercial usage, or by the laws of any other state, government, or country, may be performed by notaries public.

SEC. 6. In all the courts of this Territory the certificate of a notary public, under his hand and seal of office, of official acts done by him as such notary, shall be received as presumptive evidence of the facts contained in

such certificate; but such certificate shall not be evidence of notice of non-acceptance or non-payment in any case in which a defendant shall annex to his plea or defence an affidavit denying the fact of having received such notice.

SEC. 7. Whenever the office of any notary public shall become vacant, the records of such notary, and all the papers relating to his office, shall be deposited in the office of the district clerk of the proper county; and any notary who, on his resignation or removal from office, shall neglect for the space of three months to deposit such records and papers, and any executor or administrator of any deceased notary public who shall neglect for the space of three months after his appointment, to deposit with said clerk all such records and papers as shall come to his hands, shall forfeit and pay a sum not less than fifty dollars nor more than two hundred dollars.

SEC. 8. If any person shall knowingly destroy, deface, or conceal any records or papers belonging to the office of a notary public, he shall forfeit and pay a sum not exceeding five hundred dollars, and such persons shall also be liable to an action for damages at the suit of the party injured.

SEC. 9. The district clerk shall receive and safely keep all the records and papers of notaries public directed to be deposited in his office, and shall give certified copies of such records and papers under his hand and seal, when required, and for such copies he shall receive the same fees as are by law allowed to notaries public; and copies so given by said clerk shall be as valid and effectual as if given by a notary public.

SEC. 10. Notaries public shall reside in the county for which they are appointed, but they may act as such notaries in any part of this Territory, and they shall receive for their services such fees as are provided by law.

CHAPTER XLI.

Of Habeas Corpus.

SEC. 1. Every person unlawfully committed, detained, confined, or restrained of his liberty, under any pretence whatever, may prosecute a writ of *habeas corpus* to inquire into the cause of such imprisonment or restraint.

SEC. 2. Application for such writ shall be made by petition, signed either by the party for whose relief it is intended, or by some person in his behalf, and shall specify: 1st. That the person in whose behalf the writ is applied for, is imprisoned or restrained of his liberty; the officer or person by whom he is so confined or restrained; and the place where, naming all the parties, if they are known, or describing them if they are not known. 2d. If the imprisonment be alleged to be illegal, the petition must also state in what the alleged illegality consists. 3d. The petition must be verified by the oath or affirmation of the party making the application.

SEC. 3. Such writ of *habeas corpus* may be granted by the supreme court, or any judge thereof, or any district court in term-time, or by any judge of such courts at any time, whether in term or vacation.

SEC. 4. Any court or judge empowered to grant any writ applied for under this chapter, to whom such petition might be presented, if it appear that the writ ought to issue, shall grant the same without delay.

SEC. 5. Such writ shall be directed to the officer or party having such person in custody or under restraint, commanding him to have the body of such person so imprisoned or detained, as it is alleged by petition before the court or judge, as the case may be, at such time as the court or judge shall direct, specifying in such writ the place where the petition will be heard, to do and receive what shall then and there be considered concerning such person, together with the time and cause of his detention, and have then there such writ.

SEC. 6. If such writ be directed to the sheriff or other ministerial officer of the court out of which said writ is issued, it shall be delivered by the clerk to such officer without delay, as other writs are delivered for service.

SEC. 7. If such writ be directed to any officer or person other than is specified in the last preceding section, the same shall be delivered to the sheriff or his deputy, or the coroner, as the case may require, and shall be by him served upon such officer or person, by delivering the same to him without delay.

SEC. 8. If the officer or person to whom such writ is directed cannot be found, or shall refuse admittance to the officer or person serving or delivering such writ, the same may be served or delivered, by leaving it at the residence of the officer or person to whom it is directed, or by affixing the same on some conspicuous place on the outside either of his dwelling-house or of the place where the party is confined or under restraint.

SEC. 9. If the officer or person to whom such writ is directed refuse, after due service as aforesaid, to obey the same, it shall be the duty of the court or judge, upon affidavit, to issue an attachment against such person, directed to the sheriff or coroner, as the case may require, commanding him forthwith to apprehend such person, and bring him immediately before such court or judge; and upon being so brought, he shall be committed to the jail of the county until he make due return to such writ, or be otherwise legally discharged.

SEC. 10. The officer upon whom such writ shall be duly served, shall state in his return plainly and unequivocally: 1st. Whether he have or have not the party in his custody, or under his power or restraint. 2d. If he have the party in his custody or power, or under his restraint, he shall state the authority and cause of such imprisonment or restraint, setting forth the same at large. 3d. If the party be detained by virtue of any writ, warrant, or other written authority, a copy thereof shall be annexed to the return, and the original shall be produced and exhibited to the court or judge on the hearing of such return. 4th. If the officer or person upon whom such writ shall have been served, shall have had the party in his power or custody, or under his restraint, any time prior or subsequent to the date of the writ of *habeas corpus*, but such officer or person has transferred such

custody or restraint to another, the return shall state particularly at what time and place, for what cause, and by what authority such transfer took place. 5th. The return must be signed by the person making the same, and, except when such person shall be a sworn public officer, and shall make such return in his official capacity, it shall be verified by his oath or affirmation.

SEC. 11. If the writ of *habeas corpus* be served, the person or officer to whom the same is directed shall also bring the body of the party in his custody, or under his restraint, according to the command of the writ, except in the cases specified in the next two sections.

SEC. 12. Whenever, from sickness or infirmity of the person directed to be produced by any writ of *habeas corpus*, such person cannot, without danger, be brought before the court or judge, the officer or person in whose custody or power he is, may state that fact in his return to the writ, verifying the same by affidavit.

SEC. 13. If the court or judge be satisfied of the truth of such allegation of sickness or infirmity, and the return to the writ is otherwise sufficient, such court or judge may proceed to decide on such return, and to dispose of the matter as if such party had been produced on the writ, or the hearing thereof may be adjourned until such party can be produced.

SEC. 14. The court or judge before whom a writ of *habeas corpus* shall be returned, shall, immediately after the return thereof, proceed to hear and examine the return, and such other matters as may be properly submitted to their hearing and consideration.

SEC. 15. The party brought before the court or judge, on the return of the writ, may deny or controvert any of the material facts or matters set forth in the return, or except to the sufficiency thereof, or allege any fact to show either that his imprisonment or detention is unlawful, or that he is entitled to his discharge.

SEC. 16. Such court or judge shall thereupon proceed in a summary way to hear such allegation and proof as may be produced against such imprisonment or detention, or in favor of the same, and to dispose of such party as the justice of the case may require.

SEC. 17. Such court or judge shall have full power and authority to require and compel the attendance of witnesses, by process of subpœna and attachment; and to do and perform all other acts and things necessary to a full and fair hearing and determination of the case.

SEC. 18. If no legal cause be shown for such imprisonment or restraint, or for the continuation thereof, such court or judge shall discharge such party from the custody or restraint under which he is held.

SEC. 19. It shall be the duty of such court or judge, if the time during which such party may be legally detained in custody has not expired, to remand such party, if it shall appear that he is detained in custody: First. By virtue of process issued by any court or judge of the United States, in a case where such court or judge has exclusive jurisdiction; or Second. By

virtue of the final judgment or decree of any competent court of criminal jurisdiction, or of any process issued upon such judgment or decree.

SEC. 20. If it appear, on the return of the writ of *habeas corpus*, that the prisoner is in custody by virtue of process from any court of this Territory, or judge or officer thereof, such prisoner may be discharged in any one of the following cases, subject, however, to the restrictions of the last preceding section: First. When the jurisdiction of such court or officer has been exceeded. Second. When the imprisonment was at first lawful, yet by some act, omission, or event which has taken place afterwards, the party has become entitled to be discharged. Third. When the process is defective in some matter of substance required by law, rendering such process void. Fourth. When the process, though proper in form, has been issued in a case not allowed by law. Fifth. When the person having the custody of the prisoner is not the person allowed by law to detain him. Sixth. Where the process is not authorized by any judgment, order, or decree of any court, nor by any provision of law. Seventh. Where a party has been committed on a criminal charge without reasonable or probable cause.

SEC. 21. If any person be committed to prison, or be in custody of any officer on any criminal charge, by virtue of any warrant or commitment of a justice of the peace, such person shall not be discharged from such imprisonment or custody on the ground of any mere defect of form in such warrant or commitment.

SEC. 22. If it shall appear to the court or judge, by affidavit, or upon hearing of the matter, or otherwise, or upon the inspection of the process or warrant of commitment, and such other papers in the proceedings as may be shown to such court or judge, that the party is guilty of a criminal offence, or ought not to be discharged, such court or judge, although the charge be defectively or unsubstantially set forth in such process or warrant of commitment, shall cause the complainant, or other necessary witnesses, to be subpœnaed to attend at such time as shall be ordered, to testify before such court or judge; and upon the examination, he shall discharge such prisoner, let him to bail if the offence be bailable, or recommit him to custody, as may be just and legal.

SEC. 23. Whenever any person may be imprisoned or detained in custody on any criminal charge for want of bail, such person shall be entitled to a writ of *habeas corpus* for the purpose of giving bail, upon averring that fact in his petition, without alleging that he is illegally confined.

SEC. 24. Any judge before whom any person who has been committed on a criminal charge may be brought on a writ of *habeas corpus*, if the same be bailable, may take a recognizance from such person as in other cases, and shall file the same in the proper court without delay.

SEC. 25. If any party brought before the court or judge, on the return of the writ, be not entitled to his discharge, and be not bailed, where such bail is allowable, such court or judge shall remand him to the custody, or place him under the restraint from which he was taken, if the person under whose custody or restraint he was, be legally entitled thereto.

SEC. 26. In cases where any party is held under illegal restraint or cus-

tody, or any other person is entitled to the restraint or custody of such party, such judge or court may order such party to be committed to the restraint or custody of such person as is by law entitled thereto.

SEC. 27. Until judgment be given on the return, the court or judge before whom any party may be brought on such writ, may commit him or her to the custody of the sheriff of the county; or place him or her in such care, or under such custody, as his or her age or circumstances may require.

SEC. 28. No writ of *habeas corpus* shall be dissolved for defect of form, if it sufficiently appear therefrom in whose custody or under whose restraint the party imprisoned or restrained is, the officer or person detaining him, and the court or judge before whom he is to be brought.

SEC. 29. No person who has been discharged by the order of the court or judge upon a *habeas corpus* issued pursuant to the provisions of this act, shall be again imprisoned, restrained, or kept in custody for the same cause: 1st. If he shall have been discharged from custody on a criminal charge, and be afterwards committed for the same offence, by legal order or process; or, 2d. If, after a discharge for defect of proof, or for any defect of the process, warrant, or commitment in a criminal case, the prisoner be again arrested on sufficient proof, and committed by legal process for the same offence.

SEC. 30. Whenever it shall appear, by satisfactory proof or affidavit, to any court or judge authorized to grant a writ of *habeas corpus*, that any one is illegally held in custody, confinement, or restraint, and that there is good reason to believe that such person will be carried out of the jurisdiction of such court or judge before whom the application is made, or will suffer some irreparable injury before compliance with a writ of *habeas corpus* can be enforced, such court or judge may cause a warrant to be issued reciting the facts, and directed to the sheriff, coroner, or constable of the county, commanding such officer to take such person thus held in custody, confinement, or restraint, and forthwith bring him or her before such court or judge, to be dealt with according to law.

SEC. 31. Such court or judge may also, if the same be deemed necessary, insert in such warrant a command for the apprehension of the person charged with such illegal detention and restraint.

SEC. 32. The officer to whom any such warrant is delivered shall execute the same by bringing the person or persons therein named before the court or judge who may have directed the issuing of such warrant.

SEC. 33. The person alleged to have such party under illegal confinement or restraint, may make return to such warrant as in case of a writ of *habeas corpus*, and the same may be denied, and like allegations, proofs, and trial shall be thereon had as upon a return to a writ of *habeas corpus*.

SEC. 34. If such party be held under illegal restraint or custody, he or she shall be discharged; and if not, he or she shall be restored to the care or custody of the person entitled thereto, or left at liberty, as the case may require.

SEC. 35. Any writ or process authorized by this chapter may be issued and served on the first day of the week, commonly called Sunday.

SEC. 36. All writs, warrants, processes, and subpœnas, authorized by the provisions of this chapter, shall be issued by the clerk of the court, and except subpœnas, sealed with the seal of such court, and shall be served and returned forthwith, unless the court or judge shall specify a particular time for any such return.

SEC. 37. All such writs and processes, when issued by order of a judge, shall be returned before him, and shall be there heard and determined.

SEC. 38. If any judge, after a proper application is made, shall refuse to grant an order for a writ of *habeas corpus*, or if the officer or person to whom such writ may be directed shall refuse obedience to the command thereof, he shall forfeit and pay to the person aggrieved a sum not exceeding five thousand dollars, to be recovered by an action of debt, in any court having cognizance thereof.

SEC. 39. Any one having in his custody or under his restraint and power any person for whose relief a writ of *habeas corpus* shall have been duly issued, pursuant to the provisions of this chapter—who, with the intent to elude the service of such writ or to avoid the effect thereof, shall transfer such person to the custody of another, or shall place him or her under the power or control of another, or shall conceal or exchange the place of his or her confinement or restraint, or shall remove him or her without the jurisdiction of such court or judge—shall be deemed guilty of a misdemeanor, and fined in a sum not exceeding five thousand dollars.

SEC. 40. Every person who shall knowingly aid or assist in the commission of any offence, specified in the last preceding section, shall be deemed guilty of a misdemeanor and punished as in the last preceding section mentioned.

SEC. 41. Every person convicted of any offence under the provisions of the last preceding sections, in addition to the punishment therein mentioned, may be also imprisoned in the county jail for a term not exceeding two years.

SEC. 42. Every writ of *habeas corpus* issued under the provisions of this chapter for the purpose of inquiring into the cause of any imprisonment or restraint, shall be substantially in the following form:

"*In the name of the Territory of Arizona—To the sheriff of the county of* (*or to 'A. B.'*):—We command you that you have the body of C. D., by you imprisoned and detained, as it is said, together with the time and cause of such imprisonment and detention, by whatsoever name the said C. D. shall be called or charged, before our justices of our supreme court (or before 'E. F., one of the justices of our supreme court,' or as the case may be), at etc., on etc. (or 'immediately after the receipt of this writ'), to do and receive what shall then and there be considered concerning the said C. D.

"And have you then there this writ.

"Witness, etc."

SEC. 43. Such writ of *habeas corpus* shall not be disobeyed for any defect of form, but it shall be sufficient—

1. If the person having the custody of the prisoner be designated either by his name of office, if he have any, or by his own name; or, if both such names be unknown and uncertain, he may be described by an assumed appellation; and any one who may be served with the writ shall be deemed the person to whom it is directed, although it may be directed to him by a wrong name or description, or to another person.

2. If the person imprisoned or restrained, or who is directed to be produced, be designated by name—or, if his name be uncertain or unknown—if he be described in any other way, so as to designate the person intended.

SEC. 44. Whenever, by authority of the constitution and laws of the United States, the privilege of the writ of *habeas corpus* is limited or suspended in certain specified cases, the petition for such writ, during such limitation or suspension, shall, in addition to what is required in section two of this chapter, contain a further statement—showing that the person so detained, confined, or restrained of his liberty, is not prohibited by such authority of the constitution or laws of the United States from applying for such writ at the time when such application is made.

SEC. 45. In case of the absence, disability, or interest of any judge authorized to act by this chapter—or there be no such judge or court in the county at the time such application is made—the judge of probate of the proper county is hereby authorized to issue such writ of *habeas corpus*, and to proceed thereon in all respects as provided in this chapter.

CHAPTER XLII.

Of Conveyances.

SEC. 1. Conveyances of lands, or of any estate or interest therein, may be made by deed, signed by the person from whom the estate or interest is intended to pass, being of lawful age, or by his lawful agent or attorney, and acknowledged or proved and recorded as hereinafter directed.

SEC. 2. A husband and wife may, by their joint deed, convey the real estate of the wife in like manner as she might do by her separate deed if she were unmarried.

SEC. 3. Every conveyance in writing whereby any real estate is conveyed or may be affected, shall be acknowledged, or proved and certified, in the manner hereinafter provided.

SEC. 4. The proof or acknowledgment of every conveyance affecting any real estate shall be taken by some one of the following officers: 1st. If acknowledged or proved within this Territory, by some judge or clerk of a court having a seal, or some notary public or justice of the peace of the proper county; 2d. If acknowledged or proved without this Territory, and within the United States, by some judge, or clerk of any court of the United States, or of any State or Territory having a seal, or by any commissioner appointed by the governor of this Territory for that purpose; 3d. If acknowledged or proved without the United States, by some judge or clerk of any court of any state,

kingdom, or empire having a seal, or by any notary public therein, or by any minister, commissioner, or consul of the United States appointed to reside therein.

SEC. 5. Every officer that shall take the proof or acknowledgment of any conveyance affecting any real estate, shall grant a certificate thereof, and cause such certificate to be endorsed or annexed to such conveyance; such certificate shall be: 1st. When granted by any judge or clerk, under the hand of such judge or clerk; 2d. When granted by an officer who has a seal of office, under the hand and official seal of such officer.

SEC. 6. No acknowledgment of any conveyance whereby any real estate is conveyed or may be affected, shall be taken, unless the person offering to make such acknowledgment shall be personally known to the officer taking the same, to be the person whose name is subscribed to such conveyance as a party thereto, or shall be proved to be such by the oath or affirmation of a credible witness.

SEC. 7. The certificate of such acknowledgment shall state the fact of acknowledgment, and that the person making the same was personally known to the officer granting the certificate to be the person whose name is subscribed to the conveyance as a party thereto, or was proved to be such by the oath or affirmation of a credible witness, whose name shall be inserted in the certificate.

SEC. 8. Such certificate shall be substantially in the following form, to wit: "*Territory of Arizona, county of* ———. On this —— day of ———, A. D. ———, personally appeared before me, a notary public (or judge, or officer, as the case may be) in and for the said county, A. B., known to me to be the person described in, and who executed the foregoing instrument, who acknowledged to me that he executed the same freely and voluntarily, and for the uses and purposes therein mentioned."

SEC. 9. When the grantor is unknown to the court or officer taking the acknowledgment, the certificate may be in the following form, to wit: *Territory of Arizona, county of* ———. On this —— day of ———, A. D. ———, personally appeared before me, a notary public (or judge, or officer, as the case may be) in and for the said county; A. B., satisfactorily proved to me to be the person described in, and who executed the within conveyance, by the oath of C. D., a competent and credible witness for that purpose, by me duly sworn, and he, the said A. B., acknowledged that he executed the same freely and voluntarily for the uses and purposes therein mentioned.

SEC. 10. The proof of the execution of any conveyance whereby any real estate is conveyed or may be affected, shall be: 1st. By the testimony of a subscribing witness; or 2d. When all the subscribing witnesses are dead, or cannot be had, by evidence of the handwriting of the party, and of at least one subscribing witness, given by a credible witness to each signature.

SEC. 11. No proof by a subscribing witness shall be taken, unless such witness shall be personally known to the officer taking the proof to be the person whose name is subscribed to the conveyance as a witness thereto, or shall be proved to be such by the oath or affirmation of a credible witness.

SEC. 12. No certificate of such proof shall be granted, unless such subscribing witness shall prove the person whose name is subscribed thereto as a party, is the person described in, and who executed the same; that such person executed the conveyance, and that such witness subscribed his name thereto as a witness thereof.

SEC. 13. The certificate of such proof shall set forth the following matters: 1st. The fact that such subscribing witness was personally known to the officer granting the certificate to be the person whose name is subscribed to such conveyance as a witness thereto, or was proved to be such by oath or affirmation of a witness, whose name shall be inserted in the certificate. 2d. The proof given by such witness of the execution of such conveyance, and of the facts, that the person whose name is subscribed in such conveyance as a party thereto is the person who executed the same, and that such witness subscribed his name to such conveyance as a witness thereof.

SEC. 14. No proof by evidence of the handwriting of the party and of a subscribing witness shall be taken, unless the officer taking the same shall be satisfied that all the subscribing witnesses to such conveyances are dead, or cannot be had to prove the execution thereof.

SEC. 15. No certificate of any such proof shall be granted, unless a competent and credible witness shall state on oath or affirmation that he personally knew the person whose name is subscribed thereto as a party, well knew his signature (stating his means of knowledge), and believe the name of the person subscribed thereto as a party was subscribed by such person; nor unless a competent and credible witness shall in like manner state that he personally knew the person whose name is subscribed to such conveyance as a witness, well knew his signature (stating his means of knowledge), and believes the name subscribed thereto as a witness was thereto subscribed by such person.

SEC. 16. Upon the application of any grantee in any conveyance required by this chapter to be recorded, or by any person claiming under such grantee, verified under the oath of the applicant, that any witness to such conveyance residing in the county where such application is made, refuses to appear and testify touching the execution thereof, and that such conveyance cannot be proved without his evidence, any officer authorized to take the acknowledgment or proof of such conveyance may issue a subpœna requiring such witness to appear before such officer and testify touching the execution thereof.

SEC. 17. Every person who being served with a subpœna shall, without reasonable cause, refuse or neglect to appear, or appearing, shall refuse to answer upon oath touching the matters aforesaid, shall be liable to the party injured in the sum of one hundred dollars, and for such damages as may be sustained by him on account of such neglect or refusal, and may also be committed to prison by the judge of some court of record, there to remain without bail until he shall submit to answer upon oath as aforesaid; but no person shall be required to attend who resides out of the county in which the proof is to be taken, nor unless his reasonable expenses shall have been first tendered to him.

SEC. 18. A certificate of the acknowledgment of any conveyance or of

the proof of the execution thereof, as provided in this chapter, signed by the officer taking the same, and under the seal of the officer, shall entitle such conveyance, with the certificate or certificates as aforesaid, to be recorded in the office of the recorder of any county in this Territory.

SEC. 19. A married woman may convey any of her real estate by any conveyance thereof, executed and acknowledged by herself and her husband, and certified in the manner hereinafter provided, by the proper officer taking the acknowledgment.

SEC. 20. No covenant expressed or implied in any such conveyance shall bind such married woman or her heirs, except so far as may be necessary effectually to convey from such married woman and her heirs, all her rights and interest expressed to be conveyed in such conveyance.

SEC. 21. Any officer authorized by this chapter to take the proof or acknowledgment of any conveyance whereby any real estate is conveyed or may be affected, may take and certify the acknowledgment of a married woman to any such conveyance of real estate.

SEC. 22. No such acknowledgment shall be taken, unless such married woman shall be personally known to the officer taking the same to be the person whose name is subscribed to such conveyance as a party thereto, or shall be proved to be such by a credible witness; nor unless such married woman shall be made acquainted with the contents of such conveyance, and shall acknowledge on an examination, apart from and without the hearing of her husband, that she executed the same freely and voluntarily, without fear or compulsion, or undue influence of her husband, and that she does not wish to retract the execution of the same.

SEC. 23. The certificate shall be in the form heretofore given, and shall set forth that such married woman was personally known to the officer granting the same to be the person whose name is subscribed to such conveyance as a party thereto, or was proved to be such by a credible witness, whose name shall be inserted in the certificate; and that she was made acquainted with the contents of such conveyance, and acknowledged, on examination apart from and without the hearing of her husband, that she executed the same freely and voluntarily, without fear or compulsion, or undue influence of her husband, and that she does not wish to retract the execution of the same. Every certificate which substantially conforms to the requirements of this chapter shall be valid.

SEC. 24. Every conveyance whereby any real estate is conveyed, or may be affected, proved, or acknowledged, and certified in the manner prescribed in this chapter, to operate as notice to third persons, shall be recorded in the office of the recorder of the county in which such real estate is situated, but shall be valid and binding between the parties thereto without such record.

SEC. 25. Every such conveyance, certified and recorded in the manner prescribed in this chapter, shall, from the time of filing the same with the recorder for record, impart notice to all persons of the contents thereof, and all subsequent purchasers and mortgagees shall be deemed to purchase with notice.

SEC. 26. Every conveyance of real estate within this Territory, hereafter

made, which shall not be recorded as provided in this chapter, shall be void as against any subsequent purchaser, in good faith and for a valuable consideration, of the same real estate, or any portion thereof, where his own conveyance shall be first duly recorded.

SEC. 27. Every power of attorney, or other instrument in writing containing the power to convey any real estate as agent or attorney for the owner thereof, or to execute as agent or attorney for another, any conveyance whereby any real estate is conveyed or may be affected, shall be acknowledged or proved, and certified and recorded as other conveyances whereby real estate is conveyed or affected, are required to be acknowledged or proved, and certified and recorded.

SEC. 28. No such power of attorney or other instrument, certified and recorded in the manner prescribed in the preceding section, shall be deemed to be revoked by any act of the party by whom it was executed, until the instrument containing such revocation shall be deposited for record in the same office in which the instrument containing the power is recorded.

SEC. 29. Every conveyance or other instrument, conveying or affecting real estate, which shall be acknowledged or proved and certified, as hereinafter prescribed, may, together with the certificate of acknowledgment or proof, be read in evidence without further proof.

SEC. 30. When any such conveyance or instrument is acknowledged or proved, certified and recorded in the manner hereinafter prescribed, and it shall be shown to the court that such conveyance or instrument is lost, or not within the power of the party wishing to use the same, the record thereof, or the transcript of such record, certified by the recorder under the seal of his office, may be read in evidence without further proof.

SEC. 31. Neither the certificate of the acknowledgment, nor of the proof of any such conveyance or instrument, nor the record, nor the transcript of the record of such conveyance or instrument, shall be conclusive, but the same may be rebutted.

SEC. 32. If the party contesting the proof of any such conveyance or instrument shall make it appear that any such proof was taken upon the oath of an incompetent witness, neither such conveyance or instrument, nor the record thereof, shall be received in evidence until established by other competent proof.

SEC. 33. If any person shall convey any real estate, by conveyance purporting to convey the same in fee-simple absolute, and shall not at the time of such conveyance have the legal estate in such real estate, but shall afterwards acquire the same, the legal estate subsequently acquired shall immediately pass to the grantee, and such conveyance shall be valid as if such legal estate had been in the grantor at the time of the conveyance.

SEC. 34. Any person claiming title to any real estate may, notwithstanding there may be an adverse possession thereof, sell and convey his interest therein in the same manner and with the same effect as if he was in actual possession thereof.

SEC. 35. The term "real estate," as used in this chapter, shall be construed as coëxtensive in meaning with lands, tenements, and hereditaments.

SEC. 36. The term "conveyance," as used in this chapter, shall be construed to embrace every instrument in writing by which any real estate or interest in real estate is created, aliened, mortgaged, or assigned, except wills, leases for a term not exceeding one year, executory contracts for the sale or purchase of lands, and powers of attorney.

SEC. 37. Any mortgage that has been, or may hereafter be, recorded, may be discharged by an entry in the margin of the record thereof, signed by the mortgagee, or his personal representative or assignee, acknowledging the satisfaction of the mortgage, in the presence of the recorder or his deputy, who shall subscribe the same as a witness, and such entry shall have the same effect as a deed of release duly acknowledged and recorded.

SEC. 38. Any mortgage shall also be discharged upon the record thereof by the recorder in whose custody it shall be, whenever there shall be presented to him a certificate executed by the mortgagee, his personal representative or assignee, acknowledged, or proved and certified as hereinbefore to entitle conveyances to be recorded, specifying that such mortgage has been paid, or otherwise satisfied and discharged.

SEC. 39. Every such certificate, and the proof or acknowledgment thereof, shall be recorded at full length, and a reference shall be made to the book containing such record, in the minutes of the discharge of such mortgage, made by the recorder upon the record thereof.

SEC. 40. If any mortgagee, or his personal representatives or assignee, as the case may be, after a full performance of the conditions of the mortgage, whether before or after a breach thereof, shall, for the space of seven days after being thereto requested, and after tender of his reasonable charges, refuse or neglect to execute and acknowledge a certificate of discharge or release thereof, he shall be liable to the mortgagor, his heirs or assigns, in the sum of one hundred dollars, and also for all actual damages occasioned by such neglect or refusal.

SEC. 41. All instruments in writing heretofore executed, conveying, or purporting to convey, any real estate within this Territory, without regard to their form, or the manner of executing the same, may be recorded by the recorder of the proper county in a separate book to be provided by him for that purpose, and when so recorded, the record shall be evidence of the contents thereof the same as is provided for conveyances executed in accordance with the provisions of this chapter. The provisions of section twenty-six shall not apply to the conveyances mentioned in this section, but the same shall have priority according to their respective dates, and not the date of their record, and shall be notice to all persons interested: Provided, that the instruments of conveyance in this section named, shall be recorded within one year from the time this chapter takes effect as a law.

SEC. 42. Any deed executed by any sheriff, commissioner, or other public officer, in any judicial proceedings, or by notice of any provision of law, upon being acknowledged by such sheriff, commissioner, or other public officer, may be recorded, and shall have the same force and effect as if executed and acknowledged by any private person.

SEC. 43. Any person owning any real estate within this Territory or

interest therein, may, by deed, convey the same to his legitimate child or children, and natural child or children, or his child or children by adoption, and to the issue of such child or children during their natural lives, whether such issue be begotten and born before the date of such conveyance or afterwards, and in such conveyance may inhibit the alienation of such estate during the natural lives of such child or children and of such issue. The estate so conveyed shall vest in the persons therein named or described, in accordance with the conditions of such conveyance, and shall not be liable for any debts contracted or liabilities incurred by the grantor, after the date of such conveyance.

SEC. 44. All deeds or other conveyances heretofore recorded in the office of any probate court of this Territory, may be transcribed from the records of such court by the county recorder, and all records of conveyance of lands within this Territory heretofore recorded in the Territory of New Mexico or in the Republic of Mexico, upon being properly certified by the officer having charge of such records, may be recorded by the county recorder of the proper county. Such records shall be made in the book provided in section forty-one of this chapter, and when so made shall have the same force and effect as other conveyances provided for in said section forty-one.

CHAPTER XLIII.

Of Forcible Entry and Detainer.

SEC. 1. No person shall make any entry into lands, tenements, or other possessions, but in cases where entry is given by law; and, in such cases, he shall not enter with force, but only in a peaceable manner.

SEC. 2. When any forcible entry shall be made, or when an entry shall be made in a peaceable manner, and the possession shall be unlawfully held by force, the person entitled to the premises may be restored to the possession thereof, in the manner hereinafter provided.

SEC. 3. The person entitled to the possession of the premises, his agent or attorney, may make complaint in writing and on oath, and deliver the same to a district court commissioner, or a judge of the district court or judge of probate for the county, setting forth that the person complained of is in possession of the lands or tenements in question, describing them, and that he entered into the same with force, or that he unlawfully holds the same by force, as the case may be.

SEC. 4. Upon receiving such complaint, the officer to whom the same is delivered shall issue his warrant, directed to the sheriff or any constable of the same county, commanding him to apprehend the person named in such complaint, and to bring him forthwith before such officer, to answer such complaint; or such officer may, at the option of the complainant, issue a summons against the defendant, as hereinafter provided, in cases of tenants holding over after the expiration of their term, and the same proceedings may be thereupon had as in case of a tenant holding over after the expiration of his lease.

SEC. 5. The sheriff or constable to whom any such warrant shall be delivered, shall execute the same by arresting the defendant, and bringing him forthwith before the officer issuing such warrant, and shall thereupon notify the complainant of such arrest.

SEC. 6. Upon the defendant being brought before such officer, on such warrant, he may plead not guilty to the complaint, or if he neglect or refuse to plead thereto, such officer shall enter such plea for him.

SEC. 7. On such issue being joined, the officer issuing the warrant shall possess all the power necessary for the trial and determination thereof, and shall proceed to hear and determine the same; and for that purpose may issue subpœnas for witnesses, and compel their attendance in like manner as justices of the peace are authorized to do in cases within their jurisdiction.

SEC. 8. If, before proceeding to the trial of such issue, either the complainant or the defendant shall request that the same be tried by a jury, such jury shall be selected and summoned, and the same proceedings shall be had in all respects as upon the trial of a cause by a jury in a justice's court, except that the sheriff, if present, may perform the same duties in the selecting, summoning, and keeping of the jury in such case, as constables are authorized to perform in cases in justices' courts, and the *venire* shall be directed to the sheriff or any constable of the county.

SEC. 9. If such defendant shall be convicted upon a trial before such officer, or by the verdict of such jury, or upon a plea of guilty to such complaint, the officer who issued the warrant shall thereupon enter a judgment that the complainant have restitution of the premises; and shall tax the costs and expenses of the complainant.

SEC. 10. The court shall thereupon issue a precept, commanding the sheriff or any constable of the county to cause the complainant to be restored and put into full possession of said premises; and shall also, in the same precept, or in a separate execution, direct the costs and expenses so taxed to be levied and collected of the defendant, in the same manner as costs are or may be collected on judgments before justices of the peace in personal actions.

SEC. 11. If the complainant shall fail to prosecute his complaint, or if on such trial the defendant shall be found not guilty, judgment shall be rendered for the defendant for his costs, which shall be taxed and collected of the complainant in the same manner hereinbefore provided for the collection of costs in favor of a complainant recovering judgment.

Summary Proceedings to recover the Possession of Land in other Cases.

SEC. 12. The person entitled to any premises, may recover possession thereof in the manner hereinafter provided in the following cases:

1. When any person shall hold over any lands or tenements after the time for which they are demised or let to him, or to the person under whom he holds, or contrary to the conditions or covenants of any lease or agreement under which he holds;
2. When any rent shall have become due on any such lease or agree-

ment, and the tenant or person in possession shall have neglected or refused for fourteen days after demand of the possession made in writing to deliver up possession of the premises, or pay the rent so due;

3. When any person shall continue in possession of any premises sold by virtue of any mortgage or execution, after the expiration of the time limited by law for the redemption of such premises;

4. When any tenant at will or by sufferance shall hold over after the determination of his estate by a notice to quit, to be served ten days previously.

SEC. 13. In the cases specified in the preceding section, the person entitled to the possession of the premises, his agent or attorney, may make complaint in writing and on oath, and deliver the same to a district court, commissioner, or judge of the district court, or judge of probate for the county, setting forth that the person complained of is in possession of the lands or tenements in question, describing them, and that such person holds the same unlawfully and against the rights of the complainant.

SEC. 14. Upon receiving such complaint, the officer to whom the same is delivered shall issue a summons directed to the sheriff or any constable of the same county, commanding him to summon the defendant to be and appear before such officer at a time and place therein to be specified, not less than three nor more than six days from the issuing thereof, to answer such complaint.

SEC. 15. The officer to whom such summons shall be delivered, shall serve the same at least two days before the return day thereof, by reading the same to the defendant, if to be found within the county, and delivering to him a copy thereof, if required, or by leaving a true copy thereof, certified by him, at the usual place of abode of such defendant, with some person of suitable age, to whom he shall explain the contents thereof.

SEC. 16. Upon the return of such summons, if the same be returned duly served and the defendant appear, such defendant may plead not guilty to the complaint; or if he neglect or refuse to plead thereto, such officer shall enter such plea for him, and such issue shall be tried and judgment shall be rendered, and the same proceedings shall be had thereon in all respects, and the costs shall be taxed and collected in the same manner as in cases of forcible entry or detainer, and with the like effect.

SEC. 17. If the defendant fail to appear on the return of such summons, and the same be returned duly served, the officer issuing such summons may, in his discretion, adjourn the hearing not more than six days from the return of such summons, and on the day to which the hearing shall be adjourned, if the defendant appear, the same proceedings shall be had as if he had appeared at the return of the summons.

SEC. 18. If the defendant fail to appear on the return of the summons, and there be no adjournment, or if the defendant fail to appear on the day to which the hearing may be adjourned, the officer shall note such failure in the minutes of his proceedings and proceed to hear the complaint and to inquire into the truth thereof; and if such officer shall be satisfied that such complaint is true and that the complainant is entitled to restitution of the premises, he shall render judgment accordingly, and tax the costs for

the complainant, and issue a writ of restitution and process for the collection of the costs as in other cases, and with the like effect.

SEC. 19. After an issue shall be joined upon any complaint in pursuance of the provisions of this chapter, the hearing may be adjourned from time to time as may be necessary, upon sufficient cause being shown, not exceeding thirty days in all.

SEC. 20. If such hearing be adjourned on the application of a defendant proceeded against by warrant for a forcible entry or forcible detainer, and the complainant shall not consent thereto, such defendant shall continue, during the time of the adjournment, in the custody of the sheriff or constable, unless he shall give bond to the complainant in the penal sum of fifty dollars, with sufficient surety to be approved by the officer issuing the warrant, conditioned to pay all such costs as shall be awarded against him in such cause.

SEC. 21. No restitution shall be made under the provisions of this chapter, of any lands or tenements of which the party complained of, or his ancestors, or those under whom he holds the premises, shall have been in the quiet possession thereof for three years next before the filing of the complaint, unless his estate therein be ended.

SEC. 22. The officer before whom any proceedings shall be had for recovering the possession of lands in pursuance of this chapter, shall possess all the necessary powers for issuing subpœnas, and compelling the attendance of witnesses, and enforcing obedience to all orders and process lawfully made or issued by him.

SEC. 23. Every person summoned as a juror, or subpœnaed as a witness, who shall not appear, or, appearing, shall refuse to serve or testify in any cause prosecuted by virtue of this chapter, shall forfeit and pay for every such refusal, unless some reasonable excuse be shown, such fine, not exceeding ten dollars, as the officer before whom the proceedings are instituted shall think proper to impose; and such officer is authorized and required to issue an execution for the collection thereof, directed to the sheriff or any constable of the county, in the same manner, and with the like effect, as justices of the peace are authorized to do in cases of similar fines imposed by them.

SEC. 24. The complainant obtaining restitution of any premises under the provisions of this chapter, shall be entitled to an action against the defendant, and may recover treble damages from the time of the forcible entry, or forcible detainer, or of the notice to quit, or demand of possession, as the case may be; and all other damages to which he may be entitled.

SEC. 25. Either party conceiving himself aggrieved by the determination or judgment of the commissioner or judge, made or rendered under the provisions of this chapter, may appeal therefrom to the district court for the same county, within the same time, in the same manner, and a return may be compelled, and the same proceedings shall be thereupon had, as near as may be, and with the like effect, as in cases of appeals from judgments rendered before justices of the peace, and costs shall be awarded and collected in the district court in the same manner. But before any appeal by a defendant shall be allowed, he shall, in addition to the usual recogni-

zance, make and execute to the complainant a bond, in the penalty to be fixed by the judge or commissioner, not less than twice the amount of the annual rent of the premises in dispute, with good and sufficient sureties, who shall justify, and also be approved by said judge or commissioner, conditioned that if the complainant obtain restitution of said premises in said suit, the said defendant will forthwith pay all the rent due or to become due the complainant for the premises described in the complaint, up to the time said complainant shall obtain possession thereof, together with costs of suit in prosecuting said complaint and obtaining restitution of said premises; which bond shall be delivered to said complainant, or his agent or attorney; and if the complainant obtain restitution of said premises, he may, at his election, sue and recover on said bond, or bring his action against the defendant, under section twenty-four of this chapter.

SEC. 26. No writ of restitution shall be issued under the provisions of this chapter, until the expiration of five days after the entry of judgment of restitution; and in case of an appeal within that time, no writ of restitution shall issue until such appeal be determined in the district court.

SEC. 27. If, upon the trial of an appeal in the district court, judgment be rendered in favor of the complainant, upon delivering a certified copy of the entry thereof to the officer before whom the proceedings were commenced, he shall issue his precept for restoring to the complainant the possession of the premises in the manner hereinbefore provided.

SEC. 28. On the trial of any cause under the provisions of this chapter, it shall be competent for the jury or officer before whom such trial may be had, to find the defendant guilty of forcibly or unlawfully holding over or detaining the premises described in the complaint, or any part thereof, and judgment may thereupon be rendered in accordance with such finding.

SEC. 29. In all proceedings under this chapter it shall be deemed a sufficient description of the premises claimed to describe them as contained in any instrument in writing purporting to convey the same, and further alleging that they are the same premises now in possession of the party complained of.

SEC. 30. The following, or equivalent forms, may be used in proceedings under this chapter, to wit:

Summons.

TERRITORY OF ARIZONA, COUNTY OF .

To the sheriff or any constable of the county aforesaid:

Whereas, A. B., of the county of ————, hath exhibited unto me, a ———— for said county, a complaint against C. D., of the county of ————, for that the said C. D., of the county of ————, on the —— day of ——, A.D. ——, at the county of ————. (here insert the substance of the complaint with sufficient certainty); you are therefore commanded to summon the said C. D., if he be found in your county, to be and appear before me at my office (or stating the place) on

the —— day of ——, A.D. ——, then and there to make answer unto the complaint aforesaid.

Given under my hand and seal, this —— day of ——, A.D. ——.

E. F., ——— ———.

Writ of Restitution.

TERRITORY OF ARIZONA, COUNTY OF .

To the sheriff or any constable of the county aforesaid:

Whereas, A. B., of the county of ————, at a court of inquiry of an unlawful or forcible entry, or unlawful detainer (as the case may be), held at my office (or state the place) in the county aforesaid, on the —— day of ——, A.D. ——, before me, a ————, by the consideration of the court, hath recovered judgment against C. D., to have restitution of (here describe the premises, as in the complaint); you are therefore commanded that, taking with you the force of the county, if necessary, you cause the said C. D. to be immediately removed from the aforesaid premises, and the said A. B. to have peaceable restitution of the same; and you are also commanded that, of the goods and chattels of the said C. D., within said county, you cause to be made the sum of ——— dollars for the said plaintiff, together with the costs of suit endorsed thereon, and make return hereof within thirty days from this date.

Given under my hand, this —— day of ——, A.D. ——.

E. F., ——— ———.

CHAPTER XLIV.

Of Judicial Districts, Assignment of Judges, and Terms of Court.

SEC. 1. The county of Pima shall constitute the First Judicial District, and the Honorable William T. Howell, Associate Justice of the Supreme Court for the Territory of Arizona, is hereby assigned to hold the courts therein.

SEC. 2. The counties of Yuma and Mohave shall constitute the Second Judicial District, and the Honorable Joseph P. Allyn, Associate Justice of the Supreme Court for the Territory of Arizona, is hereby assigned to hold the courts therein.

SEC. 3. The county of Yavapai shall constitute the Third Judicial District, and the Hon. William F. Turner, Chief Justice of the Supreme Court for the Territory of Arizona, is hereby assigned to hold the courts therein.

SEC. 4. There shall be two general terms of the district court in each

county excepting Mohave, and shall be holden therein at the times following—that is to say: After the first day of July next, in the county of Pima, on the second Monday in April and the first Monday in October. In the county of Yuma on the third Monday of May and the second Monday in November. In the county of Yavapai on the first Monday in June and the first Monday in December. In the county of Mohave the terms of court shall be appointed by the District Judge of the Second Judicial District, whenever the county commissioners thereof shall notify him that the interest of their county requires such terms; and when so appointed, shall have the same force and effect as if incorporated in this chapter.

SEC. 5. That previous to the first day of July next there shall be held the following terms of said courts, in lieu of the courts appointed to be held by the proclamations of the governor of this territory, to wit: In the county of Yuma on the first Monday in February next. In the County of Yavapai on the first Monday of March next. In the county of Pima on the second Monday of April next. And said Judges may hold such adjourned and special terms in their several districts as to them shall seem proper.

SEC. 6. All writs, processes, and other proceedings heretofore made returnable at any of the said district courts, which have not been held or will not be held in consequence of this chapter, shall be returnable and proceeded with at the next courts provided for in this chapter as if they had been returnable thereto.

CHAPTER XLV.

Of Courts of Justice in General, and their Jurisdiction.

PART I.

SEC. 1. The following shall be the courts of justice for this Territory:

1. The supreme court.
2. The district court.
3. The probate court.
4. The justices' courts, and
5. Such other courts of a police character as may be established by law.

PART II.

SEC. 2. The supreme court of this Territory shall consist of the judges appointed for the Territory by the President of the United States, and, in addition to the powers conferred upon them by the constitution and laws of the United States, they are hereby invested with full powers to discharge all the duties required of them by the laws of this Territory.

The Supreme Court.

SEC. 3. The supreme court shall have appellate jurisdiction in all cases where the matter in dispute exceeds one hundred dollars, when the legality

of any tax, toll, or impost, or municipal fine is in question, and in all criminal cases amounting to felony, or questions of law alone.

SEC. 4. The supreme court shall have jurisdiction to review upon appeal, or other proceedings provided by law:

1st. A judgment in an action or proceeding commenced in the district courts, when the matter in dispute exceeds two hundred dollars, or when the possession of land or tenements is in controversy, or brought into that court from another court, and to review, upon the appeal from such judgment, any intermediate order involving the merits and necessarily affecting the judgment.

2d. An order, granting or refusing a new trial, sustaining or overruling a demurrer, or affecting a substantial right in an action or proceeding.

SEC. 5. This court, and each of the justices thereof, shall have power to issue all writs necessary or proper to the complete exercise of the powers conferred by law, and by this and other statutes. The judges of said court, at chambers during vacation, may also hear and determine on appeal writs of *mandamus*, *certiorari*, and *quo warranto*.

SEC. 6. This court may reverse, affirm, or modify the judgment or order appealed from, as to any or all of the parties, and may if necessary or proper order a new trial. When the judgment or order is reversed or modified, this court may make complete restitution of all property and rights lost by the erroneous judgment or order.

SEC. 7. There shall be one term of this court in each year, to commence on the first Monday in December, and to continue until the third Saturday thereafter, inclusive, unless all the cases ready for hearing be sooner disposed of. If all the cases ready for hearing be not disposed of, the term may be continued as much longer as in the opinion of the court the public interests shall require. The first term of said court shall be held in the year eighteen hundred and sixty-five, at Tucson, in the first judicial district. The second term of said court shall be held at Prescott, in the third judicial district; and the third term of said court shall be held at La Paz, in the second judicial district.

SEC. 8. The presence of two justices shall be necessary for the transaction of business, and the concurrence of two justices shall be necessary to pronounce a judgment. If two do not concur the case shall be reheard.

SEC. 9. If a room in which to hold the court be not provided by the Territory, together with attendance, fuel, lights, and stationery, suitable and sufficient for the transaction of business, the court may direct the sheriff of the county in which it is held to provide such room, attendance, fuel, lights, and stationery, and the expense thereof shall be paid out of the Territorial treasury.

SEC. 10. The record of the proceedings kept by the clerk thereof shall be read, corrected, and signed by the presiding judge.

PART III.

Of the District Courts.

SEC. 11. There shall be three district courts in this Territory to be established by law; and a judge of the supreme court shall be assigned to and hold the courts in each of such districts.

SEC. 12. In addition to the jurisdiction of the district courts, as conferred by the constitution and laws of the United States, their jurisdiction shall be of two kinds. First, original; second, appellate.

SEC. 13. Their original jurisdiction shall extend to all civil cases where the amount exceeds one hundred dollars, exclusive of interest. And to all criminal cases not otherwise provided for. In cases involving the title or possession of real property, and in all issues of fact joined in a probate court and brought into this court as provided by law, their jurisdiction shall be unlimited.

SEC. 14. The appellate jurisdiction of these courts shall extend to hearing upon appeal:

1. All actions from courts of justice of the peace which shall be returned therein agreeably to law.
2. An order or judgment of the probate court in the cases prescribed by statute.
3. To issue writs of *certiorari* to inferior courts, boards, or officers, to compel a return of their proceedings, to examine or try the same, and render any judgment or make any order thereon necessary for the furtherance of justice; and to issue writs of prohibition or other remedial writs necessary to carry out the powers contained in this subdivision.
4. To establish such orders and rules of practice as shall be necessary to enforce the provisions of, and conduct the proceedings under, the preceding subdivision.
5. An order or judgment of a probate court in the cases prescribed by statute.

SEC. 15. These courts, and the judges thereof, shall have power to issue all writs necessary or proper to the complete exercise of the power conferred upon them by this and other statutes.

SEC. 16. The terms shall be held at the county seats of the several counties; if a room for holding the court be not provided by the county, together with attendants, fuel, lights, and stationery, suitable and sufficient for the transaction of business, the court may direct the sheriff to provide such room, attendants, fuel, lights, and stationery, and the expenses thereof shall be a county charge.

SEC. 17. The terms shall be held until the business of the term is fully disposed of, or until the day fixed for the commencement of some other term in the district, and may be adjourned from time to time in the discretion of the court.

SEC. 18. The district judges shall, at all reasonable times, when not

engaged in holding courts, transact such business at their chambers as may be done out of court, at chambers; they may try and determine writs of *mandamus*, *certiorari*, and *quo warranto*, hear and dispose of all applications for orders and writs which are usually granted in the first instance upon an *ex parte* application, and may in their discretion also hear applications to discharge such orders and writs.

SEC. 19. A district judge may hold a term in any judicial district in this Territory upon the request of the judge of the district in which such term is to be held; and when, by reason of sickness or absence from the Territory, or from any other cause, a term cannot be held in a district by the judge thereof, a certificate of that fact shall be transmitted by the clerk to the governor, who shall thereupon direct some other district judge to hold such term. It shall be the duty of the judge thus directed to hold such term.

SEC. 20. Each district court shall have power to make rules not inconsistent with the laws of this Territory, for its own government and the government of its officers, but such rules shall not be in force until thirty days after their adoption and publication; and no rule shall be made imposing any tax or charge upon any legal proceeding, or making an allowance to any officer for services.

SEC. 21. The said district courts, in addition to the powers conferred by statute, shall have power to proceed according to the course of the common law.

SEC. 22. All judges of courts of record, and the clerks and deputy clerks of the same, all notaries public and justices of the peace, shall have power to administer all oaths required to be administered or taken under any law of this Territory; and all other officers or persons shall have power to administer such oaths as may be required by law of them, or appertain to the duties of their office or the trust conferred upon them.

SEC. 23. The judges of the supreme court and the judge of each district court shall have power to appoint a clerk for their respective courts, which shall be in writing, signed by them, and filed in the office of the clerk so appointed, or by an order for that purpose entered on the record of the court; and any clerk so appointed may be removed by the judges or judge so appointing him at their pleasure.

Probate Court and Courts of Justice of the Peace.

SEC. 24. The probate court and courts of justice of the peace shall possess such jurisdiction as shall be conferred on them by law.

Seals of Courts of Justice.

SEC. 25. Each of the following courts, and no other, shall have a seal:

1st. The supreme court;
2d. The district courts; and
3d. The probate courts.

SEC. 26. The judges of said courts may devise their seals, or adopt the same now in use; and whenever, from any cause, any such court is without a seal, the clerk of such court may use his private seal whenever a seal is required, and the clerk of each court shall keep the seal thereof.

SEC. 27. The seal of the court need not be affixed to any proceedings therein, except:

1st. To a summons or writ;
2d. To the proof of a will or the appointment of an executor, administrator, or guardian;
3d. To the authentication of a copy of a record, or other proceedings of a court or officer thereof for the purpose of record or evidence in another court or place.

SEC. 28. The seal may be affixed by impressing it on the paper, or on a substance attached to the paper, and capable of receiving the impression.

SEC. 29. The record of proceedings in each district and probate court shall be kept by the clerk thereof, and from time to time read in open court, corrected, and signed by the judge.

SEC. 30. The supreme court and each district court may appoint a commissioner, who shall have the power of a judge at chambers, so far and under such regulations and restrictions as the supreme court shall by rule prescribe; and until the supreme court shall by rule prescribe such powers, the said commissioner shall possess and exercise the powers of a judge at chambers as to *habeas corpus* and all orders, writs, and injunctions, except that he shall not make any final determination except upon writs of *habeas corpus*.

CHAPTER XLVI.

Of Clerks of the Supreme and District Courts.

SEC. 1. The clerk of the supreme court shall, before entering on the duties of his office, take the oath of office prescribed by law, and give bonds to the Territory in such form and with such sureties as shall be approved by the judges of said court, in a sum of five thousand dollars, conditioned for the faithful performance of the duties of his office, and the payment of all moneys which may come into his hands as such clerk, to the person, officer, or body, entitled by law to receive the same, which bond shall be deposited and filed in the office of the secretary of the Territory.

SEC. 2. He shall keep his office at the capital of the Territory, and may appoint one or more deputies, who shall have the same power in all respects as their principal. The appointment shall be in writing, signed by the clerk, and shall be filed in the office of the secretary of the Territory; he may revoke such appointment at pleasure, by writing, filed in the same office; he may take from each of his deputies a bond for the faithful performance of his duties, and containing the same conditions as the bond required to be given by himself; but he and his sureties on his official bond shall be liable for all the official acts of each deputy.

SEC. 3. All process issued by any such deputy clerk, shall be issued in the name of the principal; and he shall, either in person or by deputy, attend each term of the supreme court.

SEC. 4. He shall issue all writs and process required to be issued from the supreme court; he shall enter, under the direction of the court, all orders, judgments, and decrees proper to be entered, the title of such cause, the date of its being filed in the said court, and a memorandum of all subsequent proceedings, with the date thereof, and the fees charged therein; and shall keep such other books of record and perform such other duties as may be required by law, or the rules and practice of the court.

SEC. 5. He shall furnish on demand a certified copy of any record, pleadings, judgments, decree, order, or other proceedings of said court, to any person requiring the same, upon paying the fee therefor established by law, except to the attorney-general, Territorial officers, or other public officers, whose duties require such certified copy; his fees therefor shall be a proper Territorial or county charge, as the case may be.

SEC. 6. For any wrongful act or omission to perform any duty imposed on him by law or the rules of the court, the clerk shall be liable on his official bond to any person injured.

SEC. 7. Each of the clerks of the district courts, before he enters on the duties of his office, shall take the oath of office, give the bond in the sum and with conditions prescribed in section one of this chapter to be taken and given by the clerk of the supreme court, except that such bond shall be approved by the district judge.

SEC. 8. Each district clerk may appoint one or more deputies, who shall have the same power in all respects as their principal. The appointment shall be in writing, signed by the district clerk, and shall be filed in the office of the recorder of the county; he may revoke the appointment of any deputy at will, by writing filed in the same office. Each deputy, before entering on his duties, shall take the oath of office, which shall be endorsed on his appointment.

SEC. 9. The district clerk may take from each of his deputies a bond with sureties for the faithful performance of his duties; but the clerk and the sureties on his official bond shall be liable for all official acts of each deputy.

SEC. 10. All processes issued by any deputy clerk shall be issued in the name of the principal.

SEC. 11. The district clerk shall either by person or by deputy attend each term of the district court held in this county.

SEC. 12. The district clerk shall keep his office at the county seat of his county, and shall take charge of and safely keep or dispose of according to law all books, papers, and records which may be filed or deposited in his office.

SEC. 13. He shall issue all writs and processes required to be issued from any court of which he is clerk; he shall enter, under the directions of the court, all orders, judgments, and decrees proper to be entered; and shall

keep in each of said courts a docket, in which shall be entered the title of each cause, with the date of its commencement, a memorandum of every subsequent proceeding in said cause, with the date thereof, and a list of all the fees charged in the cause, and shall keep such other books of record as may be required by law or by the rules of the court.

SEC. 14. For any wrongful act or any omission to perform any duty imposed on him by law, the clerk shall be liable on his bond to any person injured.

SEC. 15. If any clerk shall knowingly and wilfully do any act contrary to the duties of his office, or shall knowingly and wilfully fail to perform any act or duty required of him by law, he shall be deemed guilty of a misdemeanor, and on conviction shall be fined in any sum not exceeding two thousand dollars, and may be removed from office.

SEC. 16. No clerk or deputy clerk shall be permitted to practise as an attorney or counsellor of law, in any action or proceeding in any court whatever. For violating the provisions of this section he shall be deemed guilty of a misdemeanor.

SEC. 17. Each clerk shall keep his office open for the transaction of business every day in the week, except Sunday, from nine o'clock in the forenoon until four o'clock in the afternoon.

SEC. 18. No clerk of a court of record shall be bound to do any act, or render any service connected with the duties of his office, other than for the county or Territory, until his fees for the same, as prescribed by law, are paid or tendered.

CHAPTER XLVII.

Of Jurors.

SEC. 1. Jurors for all courts of record in this Territory may be selected, drawn, and summoned in the manner prescribed in this chapter.

SEC. 2. The judge of the district court, the probate judge and sheriff of the proper county, or any two of them, shall meet at the office of the clerk of the district court on the first Tuesday of March in each year, and at such other times as they may deem it necessary, and there proceed to select from the electors of such county, qualified to serve as jurors, not less than thirty-six nor more than fifty for grand jurors, and not less than forty nor more than sixty for trial jurors; and the persons so selected shall be subject to be drawn and summoned as such jurors for the year next ensuing, unless additions to such lists are made, subject to the provisions of this chapter.

SEC. 3. At the time of making such selection the clerk of the district court shall make a full list of the names so selected for grand and for trial jurors, which shall be certified to as correct by the officers making the same, and which list, when so certified, shall be filed by such clerk and preserved in his office.

The Qualifications and Exemptions of Jurors.

SEC. 4. A person shall not be competent to act as juror unless he be—First. A citizen of the United States. Second. An elector of the county in which he is returned. Third. Over twenty-one and under sixty years of age. Fourth. In the possession of his natural faculties. Fifth. Nor shall any person be competent to act as juror who has been convicted of a felony or misdemeanor, involving moral turpitude. Sixth. Nor unless he understands proceedings in the English language.

SEC. 5. A person shall be exempt from liability to act as a juror if he be—First. A judicial officer. Second. Any other civil officer of this Territory or of the United States, whose duties are at the time inconsistent with his attendance as a juror. Third. An attorney or counsellor. Fourth. A minister of the gospel or a priest of any denomination. Fifth. A teacher in a college, academy, or school. Sixth. A practising physician. Seventh. An officer, keeper, or attendant of an almshouse, hospital, asylum, or other charitable institution, created by or under the laws of this Territory. Eighth. Any person engaged in the performance of duty as officer, keeper, or attendant of any county jail, or of the Territorial prison. Ninth. A captain, master, or other officer, or any person employed on board of a steamer, vessel, or boat navigating the waters of this Territory; and keepers of public ferries.

SEC. 6. A person may be excused from acting as juror when for any reason his interests, or those of the public, will be materially injured by his attendance, or when his own health, or the death or sickness of a member of his family, requires his absence.

Manner of Summoning, Drawing, and Forming Grand Juries.

SEC. 7. When at any time, before the session of a court authorized by law to inquire into public offences by the intervention of a grand jury, it shall appear necessary to the presiding judge of said court that a grand jury should be summoned, he shall in writing order the sheriff of the county in which the court is to be held to summon such grand jury.

SEC. 8. Upon receipt of the order, as mentioned in the last section, the probate judge, district clerk, and sheriff shall immediately proceed to copy from the list filed in his office the names of the persons thereon, each name to be upon a separate piece or slip of paper. The ballots so prepared shall be placed in a box prepared by the district clerk for that purpose, and said district clerk shall, in the presence of the probate judge and the sheriff, draw from the box the names of twenty-four persons to serve as grand jurors until discharged by the court. The clerk shall keep a correct list of the names placed in the box and the names of those so drawn, and the list shall be signed by the probate judge, the district clerk, and the sheriff, and be filed in the clerk's office.

SEC. 9. After the drawing, the clerk shall make a certified copy of the list mentioned in the last section, and deliver the same to the sheriff. It shall be the duty of the sheriff, upon receipt of such list, to proceed to summon the persons mentioned therein to attend the court, by giving notice to each of them personally, or by leaving a written notice at his place of residence, with some person of suitable age and discretion.

SEC. 10. The sheriff shall also return the list to the court, at its opening, specifying the persons summoned, and the manner in which each was notified.

SEC. 11. At the opening of the court the list shall be called over, and the court may impose a fine, not exceeding fifty dollars, for each day a grand juror shall, without cause, neglect to attend. If, however, the notice was not personally served, the fine shall not be imposed, until, upon an order to show cause, an opportunity has been offered to the juror to be heard.

SEC. 12. When, of the persons summoned, not less than seventeen and not exceeding twenty-three attend, they shall constitute the grand jury. If, of the persons summoned, less than seventeen attend, they shall be placed on the grand jury, and the court shall order the sheriff to summon from the body of the county, and not from the bystanders, a sufficient number to complete the grand jury.

SEC. 13. If a challenge to the panel or to an individual grand juror be allowed, or if, and as often as it becomes necessary, from any other cause, the court may order the sheriff to summon immediately, or for a day fixed, from the body of the county, but not from the bystanders, a sufficient number of persons to complete the grand jury, or to form a new grand jury, as the case may be.

SEC. 14. If the judge of the court, as provided in section 7 of this chapter, shall not deem it necessary that a grand jury shall be summoned, or after the commencement of the session of the court it shall appear proper to said judge that a grand jury should be summoned, he shall cause an order to be entered upon the minutes of the court ordering the same, and a copy of such order shall be delivered to the sheriff.

SEC. 15. It shall be the duty of the sheriff, upon receipt of the order mentioned in section fourteen, to proceed immediately and draw from the list of grand jurors as provided in sections one and two, and after the manner prescribed in section eight of this chapter, the names of twenty-four persons, who shall be summoned to appear before the court at the time mentioned in said order. The summons shall be served in the same manner as provided in section nine of this chapter.

SEC. 16. The grand jury provided for in the last section shall be subject to the provisions of sections twelve and thirteen of this chapter. It shall be drawn and may be completed in the same manner, and the jurors who shall be absent without cause shall be subject to the fine as provided in section eleven, and the said jury shall be as competent in all respects as if summoned before the session of the court.

Trial Jurors, and the Formation of Trial Juries and Juries of Inquest.

SEC. 17. A trial jury shall be drawn for any general term of the district court held for criminal business.

SEC. 18. The trial jurors for the district court shall be drawn and summoned in the same manner as grand jurors are required to be summoned

by this chapter, and the provisions of this chapter as to the formation of grand juries, and the imposition of a fine upon grand jurors for non-attendance when summoned, shall apply to the formation of trial juries in those courts, the word "trial" being substituted for "grand" in the sections of that article, and except that no trial jury shall consist of more than twelve jurors.

SEC. 19. When from any cause it shall become necessary during the term, the court may order the sheriff to summon, either immediately or for a day fixed, from the citizens of the county, but not from the bystanders, a sufficient number of persons to complete the trial jury, or form a new trial jury, as the case may be. The persons thus summoned shall be as competent trial jurors in all respects as if drawn and summoned before the commencement of the term.

SEC. 20. The clerk of said court shall issue the order, and the clerk shall execute and return it at the time specified, with a list of the persons summoned; if he has been unable to summon the whole number in the time allowed, he shall return the order with the list of the names of the persons so summoned.

SEC. 21. The court may, in its discretion, enlarge the time of the return, and direct the sheriff to summon the whole number, or may proceed to empannel the jury or juries from the number summoned.

SEC. 22. Upon return of the order, or upon the expiration of the further time allowed, the names of the persons summoned shall be called, and the court shall proceed to empannel the jury or juries; if any person summoned fails to attend, without reasonable excuse, the court may impose a fine upon him not exceeding fifty dollars, and may compel attendance by attachment.

SEC. 23. The clerk shall prepare separate ballots containing the names of those in attendance, and deposit them in a box; he shall then in open court draw from the box twelve names, and the persons so drawn shall form a trial jury. If the court so direct, he shall continue the drawing until a second jury is drawn. When two juries are drawn, the court may direct at what time they shall each attend.

SEC. 24. If there be not a sufficient number of the persons summoned to form one jury, or, if required, two juries, the court may direct others to be summoned.

SEC. 25. The court may at any time in term, in its discretion, discharge the whole jury, and if there be two juries in attendance, may discharge one or both of them; and when a jury is discharged, another may be formed in the same manner as herein prescribed.

SEC. 26. Whenever a jury shall be by law required in the probate court, the judge of such court may order a jury to be drawn, or make an order for summoning such jury, as is provided in this chapter for juries in the district court.

CHAPTER XLVIII.

Of Proceedings in Civil Cases.

Of the Form of Civil Actions, and of the Parties thereto.

SEC. 1. There shall be in this Territory but one form of civil action for the enforcement or protection of private rights and the redress or prevention of private wrongs.

SEC. 2. In such action the party complaining shall be known as the plaintiff, and the adverse party as the defendant.

SEC. 3. When a question of fact not put in issue by the pleadings is to be tried by a jury, an order for the trial may be made, stating distinctly and plainly the question of fact to be tried; and such order shall be the only authority necessary for a trial.

SEC. 4. Every action shall be prosecuted in the name of the real party in interest, except as otherwise provided in this chapter.

SEC. 5. In the case of an assignment of a thing in action, the action by the assignee shall be without prejudice to any set-off or other defence, existing at the time of, or before notice of the assignment; but this section shall not apply to a negotiable promissory note or bill of exchange, transferred in good faith, and upon good consideration before due.

SEC. 6. An executor or administrator, a trustee of an express trust, or a person expressly authorized by statute, may sue without joining with him the persons for whose benefit the action is prosecuted.

SEC. 7. When a married woman is a party, her husband shall be joined with her; except that:

1st. When the action concerns her separate property, she may sue alone;
2d. When the action is between herself and her husband, she may sue or be sued alone.

SEC. 8. If a husband and wife be sued together, the wife may defend for her own right.

SEC. 9. When an infant is a party he shall appear by guardian, who may be appointed by the court in which the action is prosecuted, or by a judge thereof.

SEC. 10. The guardian shall be appointed as follows:

1st. When the infant is plaintiff, upon the application of the infant, if he be of the age of fourteen years; or if under that age, upon the application of a relative or friend of the infant;
2d. When the infant is defendant, upon the application of the infant, if he be of the age of fourteen years, and apply within ten days after the service of the summons; if he be under the age of fourteen, or neglect so to apply,

then upon the application of any other party to the action, or of a relative or friend of the infant.

SEC. 11. A father, or, in case of his death or desertion of his family, the mother, may maintain an action for the injury or death of a child; and a guardian, for the injury or death of his ward.

SEC. 12. All persons having an interest in the subject of the action and in obtaining the relief demanded, may be joined as plaintiffs, except when otherwise provided in this chapter.

SEC. 13. Any person may be made a defendant who has or claims an interest in the controversy adverse to the plaintiff, or who is a necessary party to a complete determination or settlement of the question involved therein.

SEC. 14. Of the parties to the action, those who are united in interest shall be joined as plaintiffs or defendants; but if the consent of any one who should have been joined as plaintiff cannot be obtained, he may be made a defendant, the reason therefor being stated in the complaint; and when the question is one of a common or general interest of many persons, or when the parties are numerous and it is impracticable to bring them all before the court, one or more may sue or defend for the benefit of all.

SEC. 15. Persons severally liable upon the same obligation or instrument, including the parties to bills of exchange and promissory notes and sureties on the same or separate instruments, may all or any of them be included in the same action, at the option of the plaintiff.

SEC. 16. An action shall not abate by the death or other disability of a party, or by the transfer of any interest therein, if the cause of action survive or continue. In case of the death or other disability of a party, the court, on motion, may allow the action to be continued by or against his representative or successor in interest. In case of any other transfer of interest, the action may be continued in the name of the original party, or the court may allow the person to whom the transfer is made to be substituted in the action.

SEC. 17. The court may determine any controversy between parties before it, when it can be done without prejudice to the rights of others or by saving their rights; but when a complete determination of the controversy cannot be had without the presence of other parties, the court shall order them to be brought in.

Of the Place of Trial of Civil Actions.

SEC. 18. Actions for the following cases shall be tried in the county in which the subject of the action, or some part thereof, is situated, subject to the power of the court to change the place of trial, as provided in this chapter:

1st. For the recovery of real property, or of an estate or interest therein, or for the determination in any form of such right or interest, and for injuries to real property.

2d. For the partition of real property.
3d. For the foreclosure of a mortgage of real property.

SEC. 19. Actions for the following causes shall be tried in the county where the cause, or some part thereof, arose, subject to the like power of the court to change the place of trial:

1st. For the recovery of a penalty or forfeiture imposed by statute, except that when it is imposed for an offence committed on a lake, river, or other stream of water, situated in two or more counties, the action may be brought in any county bordering on such lake, river, or stream, and opposite to the place where the offence was committed.
2d. Against a public officer or person especially appointed to execute his duties, for an act done by him in virtue of his office, or against a person who, by his command or in his aid, does anything touching the duties of such officer.

SEC. 20. In all other cases, the action shall be tried in the county in which the parties, or some of them, reside, at the commencement of the action, or the defendant may be found; or if none of the parties reside in the Territory, the same may be tried in any county which the plaintiff may designate in his complaint; subject, however, to the power of the court to change the place of trial, as provided in this chapter.

SEC. 21. The court may, on motion, change the place of trial in the following cases:

1st. When the county designated in the complaint is not the proper county.
2d. When there is reason to believe that an impartial trial cannot be had therein.
3d. When the convenience of witnesses and the ends of justice would be promoted by the change.
4th. When from any cause the judge is disqualified from acting in the action.

Of the Manner of commencing Civil Actions.

SEC. 22. Civil actions in the district courts shall be commenced by the filing of a complaint with the clerk of the court in which the action is brought, and the issuance of a summons thereon.

SEC. 23. The clerk shall endorse on the complaint the day, month, and year the same is filed; and at any time after the filing, the plaintiff, or his attorney, may issue and sign a summons directed to the defendant.

SEC. 24. The summons shall state the parties to the action, the court in which it is brought, the county in which the complaint is filed, and require the defendant to appear and answer the complaint within the time mentioned in the next section, after the service of summons, exclusive of the day of service; or that judgment, by default, will be taken against him.

SEC. 25. The time in which the summons shall require the defendant to answer the complaint, shall be as follows:

1st. If the defendant is served within the county in which the action is brought, twenty days.
2d. If the defendant is served out of the county, but in the district in which the action is brought, thirty days.
3d. In all other cases, forty days.

SEC. 26. There shall also be inserted in the summons a notice, in substance as follows:

1st. In an action arising on contract for the recovery only of money or damages, that the plaintiff will take judgment for a sum specified therein, if the defendant fail to answer the complaint.
2d. In other actions, that if the defendant fail to answer the complaint, the plaintiff will apply to the court for the relief demanded therein.

SEC. 27. In an action affecting the title to real property, the plaintiff, at the time of filing the complaint, or at any time afterwards, may file with the recorder of the county in which the property is situated, a notice of the pendency of the action, containing the names of the parties, the object of the action, and a description of the property in that county affected thereby. From the time of filing only, shall the pendency of the action be constructive notice to a purchaser or incumbrancer of the property affected thereby.

SEC. 28. The summons shall be served by the sheriff of the county where the defendant is found, or by his deputy, or by a person specially appointed by him, or appointed by a judge of the court in which the action is brought. A copy of the complaint shall be served with the summons. The summons shall be returned, with the certificate or affidavit of the officer of its service, and of the service of the copy of the complaint, to the office of the clerk in which the complaint is filed; such summons may also be served by any white male inhabitant over twenty-one years of age, and returned as above directed, with his affidavit, showing the time and manner of serving the same, and the complaint therewith.

SEC. 29. The summons shall be served by delivering a copy thereof attached to the copy of the complaint, as follows:

1st. If the suit be against a corporation, to the president or other head of the corporation, secretary, cashier, or managing agent thereof, or to any lawful agent appointed for that purpose, or any director or stockholder.
2d. If against a minor under the age of fourteen years, to such minor personally, and also to his father, mother, or guardian; or if there be none within the Territory, then to any person having the care and control of such minor, or with whom he resides, or in whose service he is employed.
3d. If against a person judicially declared to be of unsound mind, or incapable of conducting his own affairs, and for whom a guardian has been appointed, to such guardian.
4th. In all other cases, to the defendant personally.

SEC. 30. When the person on whom the service is to be made resides out of the Territory, or has departed from the Territory, or cannot, after due diligence, be found within the Territory, or conceals himself to avoid the service of summons, and the fact shall appear by affidavit to the satisfaction of the court, or a judge thereof, and it shall in

like manner appear that a cause of action exists against the defendant in respect to whom the service is to be made, or that he is a necessary or proper party to the action, such court or judge may grant an order that the service be made by the publication of the summons. When it is necessary to commence suit for the foreclosure of a mortgage, or for the complete determination of the title to real estate against the unknown heirs of any deceased party residing out of the Territory, they may be sued as the "unknown heirs of the deceased," and service of the summons may be made in the manner provided in this section.

SEC. 31. The order shall direct the publication to be made in a newspaper to be designated as most likely to give notice to the person to be served, and for such length of time as may be deemed reasonable, at least once a week. *Provided*, that publication against a defendant residing out of the Territory, or absent therefrom, shall not be less than four months. In case of publication, where the residence of a non-resident or absent defendant is known, the court or judge shall also direct a copy of the summons and complaint to be forthwith deposited in the post-office, directed to the person to be served, at his place of residence. When publication is ordered, personal service of a copy of the summons and complaint out of the Territory shall be equivalent to publication and deposit in the post-office. In either case the service of the summons shall be deemed complete at the expiration of the time prescribed by the order for publication.

SEC. 32. Where the action is against two or more defendants, and the summons is served on one or more, but not on all of them, the plaintiff may proceed as follows:

1st. If the action be against the defendants jointly indebted upon a contract, he may proceed against the defendant served, unless the court otherwise direct; and if he recover judgment, it may be entered against all the defendants thus jointly indebted, so far only as that it may be enforced against the joint property of all, and the separate property of the defendant served; or,

2d. If the action be against defendants severally liable, he may proceed against the defendants served, in the same manner as if they were the only defendants.

SEC. 33. Proof of the service of the summons shall be as follows:

1st. If served by the sheriff or his deputy, the affidavit or certificate of such sheriff or deputy; or,

2d. If by any other person, his affidavit thereof; or,

3d. In case of publication, the affidavit of the printer, or his foreman, or principal clerk, showing the same; and an affidavit of a deposit of a copy of the summons in the post-office, if the same shall have been deposited; or,

4th. The written admission of the defendant.

SEC. 34. In case of service otherwise than by publication, the certificate or affidavit shall state the time and place of the service.

SEC. 35. From the time of the service of the summons and copy of complaint in a civil action, the court shall be deemed to have acquired jurisdiction, and to have control of all the subsequent proceedings. A voluntary

appearance of a defendant shall be equivalent to personal service of the summons upon him.

Of the Pleadings in Civil Actions.

SEC. 36. The pleadings are the formal allegations by the parties of their respective claims and defences, for the judgment of the court.

SEC. 37. All the forms of pleadings in civil actions, and the rules by which the sufficiency of the pleadings shall be determined, shall be those prescribed in this chapter.

SEC. 38. The only pleading on the part of the plaintiff shall be the complaint or demurrer to the defendant's answer, and the only pleading on the part of the defendant shall be the demurrer, or the answer; a copy of all pleadings, except the complaint, shall be served on the opposite party or his attorney, if he has appeared within twenty days after a former pleading has been served.

SEC. 39. The complaint shall contain:

1st. The title of the action, specifying the name of the court and the name of the county in which the action is brought, and the names of the parties to the action, plaintiff and defendant.
2d. A statement of the facts constituting the cause of action in ordinary and concise language.
3d. A demand of the relief which the plaintiff claims. If the recovery of money, or damages be demanded, the amount thereof shall be stated.

SEC. 40. The defendant may demur to the complaint within the time required in the summons to answer, when it appears upon the face thereof, either:

1st. That the court has no jurisdiction of the person of the defendant or the subject of the action; or,
2d. That the plaintiff has not legal capacity to sue; or,
3d. That there is another action pending between the same parties for the same cause; or,
4th. That there is a defect of parties, plaintiff or defendant; or,
5th. That several causes of action have been improperly united; or,
6th. That the complaint does not state facts sufficient to constitute a cause of action.

SEC. 41. The demurrer shall distinctly specify the grounds upon which any of the objections to the complaint are taken. Unless it do so, it may be disregarded.

SEC. 42. The defendant may demur to the whole complaint, or to one or more of several causes of action stated therein, and answer the residue; or may demur and answer at the same time.

SEC. 43. If the complaint be amended, the amendments shall be filed, and a copy served upon the defendant or his attorney, if he has appeared by attorney; otherwise a new summons shall issue thereon.

SEC. 44. When any of the matters enumerated in section forty does not appear upon the face of the complaint, the objection may be taken by answer.

SEC. 45. If no such objection be taken, either by the demurrer or answer, the defendant shall be deemed to have waived the same, excepting only the objection to the jurisdiction of the court, and the objection that the complaint does not state facts sufficient to constitute a cause of action.

SEC. 46. The answer of the defendant shall contain:

1st. In respect to each allegation of the complaint controverted by the defendant, a general or specific denial thereof, or a denial thereof according to his information and belief, or any knowledge thereof sufficient to form a belief.

2d. A statement of any new matter constituting a defence or counter-claim, in ordinary and concise language.

SEC. 47. The counter-claim mentioned in the last section shall be one existing in favor of the defendant, and against a plaintiff, between whom a several judgment might be had in the action, and arising out of one of the following causes of action:

1st. A cause of action arising out of the transaction set forth in the complaint as the foundation of the plaintiff's claim, or connected with the subject of the action.

2d. In an action arising upon contract; any other cause of action arising also upon contract, and existing at the commencement of the action.

SEC. 48. When cross-demands have existed between persons under such circumstances that, if one had brought an action against the other, a counter-claim could have been set up, neither shall be deprived of the benefit thereof by the assignment or death of the other; but the two demands be deemed compensated, so far as they equal each other.

SEC. 49. The defendant may set forth, by answer, as many defences and counter-claims as he may have. They shall each be separately stated, and the several defences shall refer to the causes of action which they are intended to answer, in a manner by which they may be intelligibly distinguished.

SEC. 50. Sham answers and defences may be stricken out on motion.

SEC. 51. Every pleading shall be subscribed by the party, or his attorney, and when the complaint is verified by affidavit, the answer shall be verified also, except as provided in the next section.

SEC. 52. The verification of the answer required in the last section may be omitted, when an admission of the truth of the complaint might subject the party to prosecution for felony.

SEC. 53. When an action is brought upon a written instrument, and the complaint contains a copy of such instrument, or a copy is annexed thereto, the genuineness and due execution of such instrument shall be deemed admitted, unless the answer denying the same be verified.

SEC. 54. When the defence to an action is founded upon a written instrument, and a copy thereof is contained in the answer, or a copy is annexed thereto, the genuineness and due execution of such instrument shall be deemed admitted, unless the plaintiff file with the clerk, five days previous to the commencement of the term at which the action is to be tried, an affidavit denying the same.

SEC. 55. In all cases of the verification of a pleading, the affidavit of the party shall state that the same is true of his own knowledge, except as to the matters which are therein stated on his information or belief, and as to those matters, that he believes it to be true. And where a pleading is verified, it shall be by the affidavit of the party, unless he be absent from the county where the attorney resides, or from some cause unable to verify it, or the facts are within the knowledge of his attorney, or other person verifying the same. When the pleading is verified by the attorney or any other person except the party, he shall set forth in the affidavit the reasons why it is not made by the party. When a corporation is a party, the verification may be made by any other officer or agent thereof; or when the Territory or any officer thereof in its behalf is a party, the verification may be made by any person acquainted with the facts, except that, in actions prosecuted by the attorney-general in behalf of the Territory, the pleadings need not in any case be verified.

SEC. 56. It shall not be necessary for a party to set forth in a pleading the items of an account therein alleged, but he shall deliver to the adverse party, within five days after a demand thereof in writing, a copy of the account, or be precluded from giving evidence thereof. The court, or a judge thereof, may order a further account, when the one delivered is too general, or is defective in any particular.

SEC. 57. If irrelevant or redundant matter be inserted in a pleading, it may be stricken out by the court on motion of any person aggrieved thereby.

SEC. 58. In an action for the recovery of real property, such property shall be described, with its metes and bounds, in the complaint.

SEC. 59. In pleading a judgment or other determination of a court or officer of especial jurisdiction, it shall not be necessary to state the facts conferring jurisdiction, but such judgment or determination may be stated to have been duly given or made. If such allegation be controverted, the party pleading shall be bound to establish on the trial the facts conferring jurisdiction.

SEC. 60. In pleading the performance of conditions precedent in a contract, it shall not be necessary to state the facts showing such performance; but it may be stated generally that the party duly performed all the conditions on his part; and if such allegation be controverted, the party pleading shall establish on the trial the facts showing such performance.

SEC. 61. In pleading a private statute, or a right derived therefrom, it shall be sufficient to refer to such statute by its title and the day of its passage, and the court shall thereupon take judicial notice thereof; except in this code it shall be sufficient to refer to the chapter by number and its title.

SEC. 62. In an action for libel or slander, it shall not be necessary to state in the complaint any extrinsic facts for the purpose of showing the application to the plaintiff of the defamatory matter out of which the cause of action arose; but it shall be sufficient to state generally that the same was published or spoken concerning the plaintiff, and if such allegation be controverted, the plaintiff shall establish on the trial that it was so published or spoken.

SEC. 63. In the actions mentioned in the last section, the defendant may, in his answer, allege both the truth of the matter charged as defamatory and any mitigating circumstances to reduce the amount of damages; and whether he prove the justification or not, he may give in evidence the mitigating circumstances.

SEC. 64. The plaintiff may unite several causes of action in the same complaint, when they all arise out of:

1st. Contracts, express or implied; or,

2d. Claims to recover specific real property, with or without damages, for the withholding thereof, or for waste committed thereon, and the rents and profits of the same; or,

3d. Claims to recover specific personal property with or without damages, for the withholding thereof; or,

4th. Claims against a trustee, by virtue of a contract or by operation of law; or,

5th. Injuries to character; or,

6th. Injuries to person; or,

7th. Injuries to property. But the causes of action so united shall all belong to one only of these classes, and shall affect all the parties to the action, and not require different places of trial, and shall be separately stated.

SEC. 65. Every material allegation of the complaint, not specifically controverted by the answers shall, for the purpose of the action, be taken as true. But the allegation of new matter in the answer shall be deemed controverted by the adverse party, as upon a direct denial or avoidance, as the case may require.

SEC. 66. A material allegation in a pleading is one essential to the claim or defence, and which could not be stricken from the pleading without leaving it insufficient.

SEC. 67. After the decision of a demurrer, and on the payment of the costs of the same, the defendant may answer upon such terms as the court shall direct.

SEC. 68. The court may, in furtherance of justice and on such terms as may be proper, amend any pleading or proceedings by adding or striking out the name of any party, or by correcting a mistake in the name of a party or a mistake in any other respect, and may upon like terms enlarge the time for an answer or demurrer, or demurrer to an answer filed. The court may likewise, upon affidavit showing good cause therefor, after notice to the adverse party, allow upon such terms as may be just, an amendment to any pleading or proceeding in other particulars, and may upon like terms allow an answer to be made after the time limited by this chapter; and

may upon such terms as may be just, and upon payment of costs, relieve a party or his legal representatives from a judgment, order, or other proceeding taken against him through his mistake, inadvertence, surprise, or excusable neglect; when from any cause the summons and a copy of the complaint in an action have not been personally served on the defendant, the court may allow, on such terms as may be just, such defendant or his legal representatives, at any time within one year after the rendition of any judgment in such action, to answer to the merits of the original action.

SEC. 69. When the plaintiff is ignorant of the name of a defendant, such defendant may be designated in any pleading or proceeding by any name; and when his true name is discovered, the pleading or proceeding may be amended accordingly.

SEC. 70. In the construction of a pleading for the purpose of determining its effects, its allegations shall be liberally construed, with a view to substantial justice between the parties.

SEC. 71. The court shall, in every stage of an action, disregard any error or defect in the pleadings or proceedings, which shall not affect the substantial rights of the parties; and no judgment shall be reversed or affected by reason of such error or defect.

Of the Provisional Remedies in Civil Actions.

Arrest and Bail.

SEC. 72. No person shall be arrested in a civil action, except as prescribed by this chapter.

SEC. 73. The defendant may be arrested as hereinafter prescribed, in the following cases arising after the passage of this chapter:

1st. In an action for the recovery of money or damages, on a cause of action arising upon contract, express or implied, when the defendant is about to depart from the Territory with intent to defraud his creditors, or when the action is for wilful injury to person, to character, or to property, knowing the property to belong to another.

2d. In an action for a fine or penalty, or for money or property embezzled or fraudulently misapplied, or converted to his own use, by a public officer; or an officer of a corporation, or an attorney, factor, broker, agent, or clerk, in the course of his employment as such; or by any other person in a fiduciary capacity, or for misconduct or neglect in office, or in a professional employment; or for a wilful violation of duty.

3d. In an action to recover the possession of personal property unjustly detained, when the property, or any part thereof, has been concealed, removed, or disposed of, so that it cannot be found or taken by the officer.

4th. When the defendant has been guilty of a fraud in contracting the debt, or incurring the obligation for which the action is brought; or in concealing or disposing of the property, for the taking, detention, or conversion of which the action is brought.

5th. When the defendant has removed or disposed of his property, or is about to do so, with intent to defraud his creditors.

SEC. 74. An order for the arrest of the defendant shall be obtained from a judge of the court in which the action is brought.

SEC. 75. The order may be made whenever it shall appear to the judge, by the affidavit of the plaintiff or some other person, that a sufficient cause of action exists; and that the case is one of those mentioned in section seventy-three. The affidavit shall be either positive, or upon information and belief; and when upon information and belief, it shall state the facts upon which the information and belief are founded. If an order of arrest be made, the affidavit shall be filed with the clerk of the court.

SEC. 76. Before making the order, the judge shall require a written undertaking on the part of the plaintiff, with sureties, to the effect that if the defendant recover judgment, the plaintiff will pay all costs and charges that may be awarded to the defendant, and all damages which he may sustain by reason of the arrest, not exceeding the sum specified in the undertaking, which shall be at least five hundred dollars. Each of the sureties shall annex to the undertaking an affidavit that he is a resident and householder, or freeholder, within the Territory, and worth double the sum specified in the undertaking, over and above all his debts and liabilities, exclusive of property exempt from execution. The undertaking shall be filed with the clerk of the court.

SEC. 77. The order may be made to accompany the summons, or any other time afterwards and before judgment. It shall require the sheriff of the county where the defendant may be found forthwith to arrest him and hold him to bail in a specified sum, and to return the order at a time therein mentioned to the clerk of the court in which the action is pending.

SEC. 78. The order of arrest, with a copy of the affidavit upon which it is made, shall be delivered to the sheriff, who, upon arresting the defendant, shall deliver to him the copy of the affidavit; and also, if desired, a copy of the order of arrest.

SEC. 79. The sheriff shall execute the order by arresting the defendant, and keeping him in custody until discharged by law.

SEC. 80. The defendant, at any time before execution, shall be discharged from the arrest, either upon giving bail, or upon depositing the amount mentioned in the order of arrest, as provided in this chapter.

SEC. 81. The defendant may give bail, by causing a written undertaking to be executed by two or more sufficient sureties, stating their places of residence and occupations, to the effect that they are bound in the amount mentioned in the order of arrest; that the defendant shall at all times render himself amenable to the process of the court during the pendency of the action, and to such as may be issued to enforce the judgment therein; or that they will pay to the plaintiff the amount of any judgment which may be recovered in the action.

SEC. 82. At any time before judgment, or within ten days thereafter, the bail may surrender the defendant in their exoneration, or he may surrender himself to the sheriff of the county where he was arrested.

SEC. 83. For the purpose of surrendering the defendant, the bail at any

time or place before they are finally charged, may themselves arrest him, or by a written authority, endorsed on a certified copy of the undertaking, may empower the sheriff to do so. Upon the arrest of the defendant by the sheriff, or upon his delivery to the sheriff by the bail, or upon his own surrender, the bail shall be exonerated: Provided, such arrest, delivery, or surrender, take place before the expiration of ten days after judgment; but if such arrest, delivery, or surrender, be not made within ten days after judgment, the bail shall be finally charged on their undertaking, and be bound to pay the amount of the judgment within ten days thereafter.

SEC. 84. If the bail neglect or refuse to pay the judgment within ten days after they are finally charged, judgment against such bail for the amount of such original judgment may be, by order of the court, upon affidavit of such neglect or refusal, entered against the bail.

SEC. 85. The bail shall also be exonerated by the death of the defendant, or his imprisonment in a Territorial prison, or by his legal discharge from the obligation to render himself amenable to the process.

SEC. 86. Within the time limited for that purpose, the sheriff shall file the order of arrest in the office of the clerk of the court in which the action is pending, with his return endorsed thereon, together with a copy of the undertaking of the bail. The original undertaking he shall retain in his possession until filed, as herein provided. The plaintiff, within ten days thereafter, may serve upon the sheriff a notice that he does not accept the bail, or he shall be deemed to have accepted them, and the sheriff shall be exonerated from liability. If no notice be served within ten days, the original undertaking shall be filed with the clerk of the court.

SEC. 87. Within five days after the receipt of notice, the sheriff or defendant may give to the plaintiff, or his attorney, notice of the justification of the same or other bail (specifying the places of residence and occupations of the latter), before a judge of the court or district clerk, at a specified time and place; the time to be not less than five nor more than ten days thereafter, except by consent of parties. In case other bail be given, there shall be a new undertaking.

SEC. 88. The qualifications of bail shall be as follows:

1st. Each of them shall be a resident and householder or freeholder within the county.

2d. Each shall be worth the amount specified in the order of arrest, or the amount to which the order is reduced, as provided in this chapter, over and above all his debts and liabilities, exclusive of property exempt from execution; but the judge or district clerk, on justification, may allow more than two sureties to justify severally in amounts less than that expressed in the order, if the whole justification be equivalent to that of two sufficient bail.

SEC. 89. For the purpose of justification, each of the bail shall attend before the judge or district clerk at the time and place mentioned in the notice, and may be examined on oath on the part of the plaintiff, touching his sufficiency, in such manner as the judge or clerk in his discretion may think proper. The examination shall be reduced to writing, and subscribed by the bail, if required by the plaintiff.

SEC. 90. If the judge or clerk find the bail sufficient, he shall annex the examination to the undertaking, endorse his allowance thereon, and cause them to be filed, and the sheriff shall thereupon be exonerated from liability.

SEC. 91. The defendant may, at the time of his arrest, instead of giving bail, deposit with the sheriff the amount mentioned in the order. In case the amount of the bail be reduced, as provided in this chapter, the defendant may deposit such amount instead of giving bail. In either case, the sheriff shall give the defendant a certificate of the deposit made, and the defendant shall be discharged out of custody.

SEC. 92. The sheriff shall immediately after the deposit pay the same into court, and take from the clerk receiving the same two certificates of such payment, the one of which he shall deliver or transmit to the plaintiff or his attorney, and the other to the defendant. For any default in making such payment, the same proceedings may be had on the official bond of the sheriff to collect the sum deposited as in other cases of delinquency.

SEC. 93. If money be deposited, as provided in the last two sections, bail may be given, and may justify upon notice at any time before judgment; and on the filing of the undertaking and justification with the clerk, the money deposited shall be refunded by such clerk to the defendant.

SEC. 94. Where money shall have been deposited, if it remain on deposit at the time of a recovery of a judgment in favor of the plaintiff, the clerk shall, under the direction of the court, apply the same in satisfaction thereof, and, after satisfying the judgment, shall refund the surplus, if any, to the defendant. If the judgment be in favor of the defendant, the clerk shall, under like direction of the court, refund to him the whole sum deposited and remaining unapplied.

SEC. 95. If, after being arrested, the defendant escape or be rescued, the sheriff shall himself be liable as bail; but he may discharge himself from such liability by the giving and justification of bail, at any time before judgment.

SEC. 96. If a judgment be recovered against the sheriff, upon his liability as bail, and an execution thereon be returned unsatisfied in whole or in part, the same proceedings may be had on his official bond for the recovery of the whole or any deficiency as in other cases of delinquency.

SEC. 97. A defendant arrested may, at any time before the justification of bail, apply to the judge who made the order, or the court in which the action is pending, upon reasonable notice to the plaintiff to vacate the order of arrest or to reduce the amount of bail. If the application be made upon affidavits on the part of the defendant, but not otherwise, the plaintiff may oppose the same by affidavits or other proofs, in addition to those on which the order of arrest was made.

SEC. 98. If upon such application it shall satisfactorily appear that there was not sufficient cause for the arrest, the order shall be vacated; or if it satisfactorily appear that the bail was fixed too high, the amount shall be reduced.

Claims and Delivery of Personal Property.

SEC. 99. The plaintiff, in an action to recover the possession of personal property, may at the time of issuing the summons, or at any time before answer, claim the delivery of such property to him, as provided in this chapter.

SEC. 100. Where a delivery is claimed, an affidavit shall be made by the plaintiff, or by some one in his behalf, showing:

1st. That the plaintiff is the owner of the property claimed (particularly describing it), or is lawfully entitled to the possession thereof;

2d. That the property is wrongfully detained by the defendant;

3d. The alleged cause of the detention thereof, according to his best knowledge, information, and belief;

4th. That the same has not been taken for a tax, assessment, or fine, pursuant to a statute; or seized under an execution or an attachment against the property of the plaintiff; or, if so seized, that it is by statute exempt from such seizure; and,

5th. The actual value of the property.

SEC. 101. A judge, or clerk of the court in which the action is brought, shall thereupon, by an endorsement in writing upon the affidavit, order the sheriff of the county where the property claimed may be, to take the same from the defendant and deliver it to the plaintiff, upon receiving the undertaking mentioned in the next section.

SEC. 102. Upon the receipt of the affidavit and order, with a written undertaking executed by two or more sufficient sureties, approved by the sheriff, to the effect that they are bound in double the value of the property as stated in the affidavit, for the prosecution of the action and for the return of the property to the defendant, if return thereof be adjudged, and for the payment to him of such sum as may, for any cause, be recovered against the plaintiff, the sheriff shall forthwith take the property described in the affidavit, if it be in the possession of the defendant or his agent, and retain it in his custody. He shall also, without delay, serve on the defendant a copy of the affidavit, order, and undertaking, by delivering the same to him personally, if he can be found, or to his agent, from whose possession the property is taken; or if neither can be found, by leaving them at the usual place of abode of either, with some person of suitable age and discretion; or if neither have any known place of abode, by putting them into the nearest post-office, directed to the defendant.

SEC. 103. The defendant may, within two days after the service of a copy of the affidavit and undertaking, give notice to the sheriff that he excepts to the sufficiency of the sureties. If he fails to do so, he shall be deemed to have waived all objections to them. When the defendant excepts, the sureties shall justify on notice in like manner as upon bail on arrest; and the sheriff shall be responsible for the sufficiency of the sureties until the objection to them is either waived, as above provided, or until they justify. If the defendant except to the sureties, he cannot reclaim the property, as provided in the next section.

SEC. 104. At any time before the delivery of the property to the plaintiff the defendant may, if he do not except to the sureties of the plaintiff, require the return thereof, upon giving to the sheriff a written undertaking

executed by two or more sufficient sureties, to the effect that they are bound in double the value of the property, as stated in the affidavit of the plaintiff, for the delivery thereof to the plaintiff, if such delivery be adjudged, and for the payment to him of such sum as may for any cause be recovered against the defendant. If a return of the property be not so required within five days after the taking and service of notice to the defendant, it shall be delivered to the plaintiff, except as provided in section one hundred and nine.

SEC. 105. The defendant's sureties, upon notice to the plaintiff of not less than two or more than five days, shall justify before a judge or district clerk, in the same manner as upon bail on arrest; and upon such justification, the sheriff shall deliver the property to the defendant. The sheriff shall be responsible for the defendant's sureties until they justify, or until the justification is completed or expressly waived, and may retain the property until that time; if they, or others in their place, fail to justify at the time and place appointed, he shall deliver the property to the plaintiff.

SEC. 106. The qualification of sureties and their justification shall be such as are prescribed by this chapter in respect to bail upon an order of arrest.

SEC. 107. If the property, or any part thereof, be concealed in a building or enclosure, the sheriff shall publicly demand its delivery; if it be not delivered, he shall cause the building or enclosure to be broken open, and take the property into his possession; and if necessary, he may call to his aid the power of his county.

SEC. 108. When the sheriff shall have taken property, as in this chapter provided, he shall keep it in a secure place, and deliver it to the party entitled thereto, upon receiving his lawful fees for taking, and his necessary expenses for keeping the same.

SEC. 109. If the property taken be claimed by any other person than the defendant or his agent, and such person make affidavit of his title thereto, or right to possession thereof, stating the grounds of such title or right, and serve the same upon the sheriff, the sheriff shall not be bound to keep the property, or deliver it to the plaintiff, unless the plaintiff, on demand of him or his agent, indemnify the sheriff against such claim, by an undertaking, by two sufficient sureties, accompanied by their affidavits, that they are each worth double the value of the property as specified in the affidavit of the plaintiff, over and above their debts and liabilities, exclusive of property exempt from execution, and are freeholders or householders in the county; and no claim to such property by any other person than the defendant or his agent shall be valid against the sheriff unless so made.

SEC. 110. The sheriff shall file the order and affidavit, with his proceedings thereon, with the clerk of the court in which the action is pending, within twenty days after taking the property mentioned therein.

Injunction.

SEC. 111. An injunction is a writ or order requiring a person to refrain from a particular act. The order or writ may be granted by the court in

which the action is brought, or by a judge thereof, and when made by a judge, may be enforced as the order of the court.

SEC. 112. An injunction may be granted in the following cases:

1. When it shall appear by the complaint that the plaintiff is entitled to the relief demanded, and such relief, or any part thereof, consists in restraining the commission or continuance of the act complained of, either for a limited period or perpetually.

2. When it shall appear by the complaint or affidavit that the commission or continuance of some act during the litigation would produce great or irreparable injury to the plaintiff.

3. When it shall appear during the litigation that the defendant is doing, or threatens, or is about to do, or is procuring or suffering to be done, some act in violation of the plaintiff's rights respecting the subject of the action, and tending to render the judgment ineffectual.

SEC. 113. The injunction may be granted at the time of issuing the summons upon the complaint; and at any time afterwards, before judgment upon affidavits. The complaint in the one case, and the affidavits in the other, shall show satisfactorily that sufficient grounds exist therefor. No injunction shall be granted on the complaint, unless it be verified by the oath of the plaintiff, or some one in his behalf, that he, the person making the oath, has read the complaint, or heard the complaint read, and knows the contents thereof, and the same is true of his own knowledge, except the matters therein stated on information and belief; and that as to those matters, he believes it to be true. When granted on the complaint, a copy of the complaint and verification attached shall be served with the injunction; when granted upon affidavit, a copy of the affidavit shall be served with the injunction.

SEC. 114. An injunction shall not be allowed after the defendant has answered, unless upon notice or upon an order to show cause; but in such case the defendant may be restrained until the decision of the court or judge granting or refusing the injunction.

SEC. 115. On granting an injunction, the court or judge shall require, except where the people of the Territory are a party plaintiff, a written undertaking on the part of the plaintiff, with sufficient sureties, to the effect that the plaintiff will pay to the party enjoined such damages, not exceeding an amount to be specified, as such party may sustain by reason of the injunction, if the court finally decide that the plaintiff was not entitled thereto.

SEC. 116. If the court or judge deem it proper that the defendant, or any of several defendants, should be heard before granting the injunction, an order may be made requiring cause to be shown at a specified time and place why the injunction should not be granted; and the defendant may in the meantime be restrained.

SEC. 117. An injunction to suspend the general and ordinary business of a corporation shall not be granted except by the court or judge; nor shall it be granted without due notice of the application therefor to the proper officers of the corporation, except when this Territory is a party to the proceeding.

SEC. 118. If an injunction be granted without notice, the defendant, at any time before the trial, may apply, upon reasonable notice to the judge who granted the injunction or to the court in which the action is brought, to dissolve or modify the same. The application may be made upon the complaint and the affidavit on which the injunction was granted, or upon affidavit on the part of the defendant, with or without the answer. If the application be made upon affidavits on the part of the defendant, but not otherwise, the plaintiff may oppose the same by affidavits, or other evidence in addition to those on which the injunction was granted.

SEC. 119. If upon such application it satisfactorily appear that there is not sufficient ground for the injunction, it shall be dissolved; or, if it satisfactorily appear that the extent of the injunction is too great, it shall be modified.

Attachment.

SEC. 120. The plaintiff, at the time of issuing the summons, or at any time afterwards, may have the property of the defendant attached as security for the satisfaction of any judgment that may be recovered, unless the defendant give security to pay such judgment, as hereinafter provided in the following cases:

1st. In an action upon a contract, express or implied, for the direct payment of money, and which is not secured by a mortgage upon real or personal property.

2d. In an action upon a contract, express or implied, against a defendant not residing in this Territory.

SEC. 121. The clerk of the court shall issue the writ of attachment upon receiving an affidavit by or on behalf of the plaintiff, which shall be filed, showing:

1st. That the defendant is indebted to the plaintiff (specifying the amount of such indebtedness, over and above all legal set-offs or counter-claims), upon a contract express or implied, for the direct payment of money, and that such contract was made or is payable in this Territory, and that the payment of the same has not been secured by any mortgage on real or personal property; or,

2d. And also showing:

1st. That the defendant is not a resident of this Territory.

2d. That he is about to remove his property and effects beyond the limits of this Territory.

3d. That he has absconded from his usual place of abode in this Territory, so that the ordinary process of law cannot be served upon him.

4th. That he is about fraudulently to conceal or make away with his property and effects, so as to defraud, hinder, or delay his creditors.

5th. That he has fraudulently concealed or made away with his property, so as to defraud, hinder, or delay his creditors.

6th. That he is about fraudulently to convey, assign, or dispose of his property, so as to defraud, hinder, or delay his creditors.

7th. That he has fraudulently conveyed, assigned, and disposed of his property, to defraud, hinder, or delay his creditors.

8th. That the defendant is a non-resident corporate body.

9th. That he is about to remove from this Territory to avoid the ordinary process of law.

SEC. 122. Before issuing the writ the clerk shall require a written undertaking on the part of the plaintiff, in a sum not less than double the amount claimed by the plaintiff, with sufficient sureties to the effect that if the defendant recover judgment the plaintiff will pay all costs that may be awarded to the defendant, and all damages which he may sustain by reason of the attachment, not exceeding the sum specified in the undertaking.

SEC. 123. The writ shall be directed to the sheriff of any county in which property of such defendant may be, and require him to attach and safely keep all the property of such defendant within his county, not exempt from execution, or so much thereof as may be sufficient to satisfy the plaintiff's demand, the amount of which shall be stated in conformity with the complaint, unless the defendant give him security by the undertaking, of at least two sufficient sureties, in an amount sufficient to satisfy such demand, besides costs; in which case, the sheriff shall take such undertaking and release the property attached. Several writs may be issued at the same time to the sheriffs of different counties.

SEC. 124. The rights or shares which the defendant may have in the stock of any corporation or company, together with the interest and profits thereon, and all debts due such defendant, and all other property in this Territory of such defendant not exempt from execution, may be attached, and if judgment be recovered, be sold to satisfy the judgment and execution.

SEC. 125. The sheriff to whom the writ is directed and delivered, shall execute the same without delay, and if the undertaking mentioned in section 123 be not given, as follows:

1st. Real property shall be attached by leaving a copy of the writ with the occupant thereof; or if there be no occupant, by posting a copy in a conspicuous place thereon, and filing a copy, together with a description of the property attached, with the recorder of the county.

2d. Personal property capable of manual delivery shall be attached by taking it into custody.

3d. Stock or shares, or interest in stock or shares, of any corporation or company, shall be attached, by leaving with the president, or other head of the same, or the secretary, cashier, or managing agent thereof, a copy of the writ, and a notice stating that the stock or interest of the defendant is attached in pursuance of such writ.

4th. Debts and credits, and other personal property, not capable of manual delivery, shall be attached by leaving with the person owing such debts, or having in his possession or under his control such credits, or other personal property, a copy of the writ, and a notice that the debts owing by him to the defendant or the creditors, and other personal property in his possession or under his control, belonging to the defendant, are attached in pursuance of such writ.

SEC. 126. Upon receiving information in writing from the plaintiff, or his attorney, that any person has in his possession or under his control any credits or other personal property belonging to the defendant, or is owing any debt to the defendant, the sheriff shall serve upon such person a copy of the writ, and a notice that such credits, or other property or debts, as the case may be, are attached in pursuance of such writ.

SEC. 127. All persons having in their possession, or under their control,

any credits or other personal property belonging to the defendant, or owing any debts to the defendant at the time of service upon them of a copy of the writ and notice, as provided in the last two sections, shall be, unless such property be delivered up or transferred, or such debts be paid to the sheriff, liable to the plaintiff for the amount of such credits, property, or debt, until the attachment be discharged, or any judgment recovered by him be satisfied.

SEC. 128. Any person owing debts to the defendant, or having in his possession or under his control any credits or other personal property belonging to the defendant, may be required to attend before the court or judge, and be examined on oath respecting the same. The defendant may also be required to attend for the purpose of giving information respecting his property, and may be examined on oath. The court or judge may, after such examination, order personal property capable of manual delivery to be delivered to the sheriff on such terms as may be just, having reference to any liens thereon, or claims against the same, and a memorandum to be given of all other personal property, containing the amount and description thereof.

SEC. 129. The sheriff shall make a full inventory of the property attached, and return the same with the writ. To enable him to make such return as to debts and credits attached, he shall request, at the time of service, the party owing the debt or having the credit to give him a memorandum stating the amount and description of each; and if such memorandum be refused, he shall return the fact of refusal with the writ. The party refusing to give the memorandum may be required to pay the costs of any proceedings taken for the purpose of obtaining information respecting the amount and description of such debt or credit.

SEC. 130. If any of the property attached be perishable, the sheriff shall sell the same in the manner in which such property is sold on execution. The proceeds and other property attached by him, shall be retained by him to answer any judgment that may be recovered in the action, unless sooner subjected to execution upon another judgment recovered previous to the issuing of the attachment. Debts and credits attached may be collected by him, if the same can be done without suit. The sheriff's receipt shall be a sufficient discharge for the amount paid.

SEC. 131. If any personal property attached be claimed by a third person as his property, the sheriff may summon a jury of six men to try the validity of such claim; and such proceedings shall be had thereon, with the like effect, as in case of a claim after levy upon execution.

SEC. 132. If judgment be recovered by the plaintiff, the sheriff shall satisfy the same out of the property attached by him which has not been delivered to the defendant, or a claimant as hereinbefore provided, or subjected to execution on another judgment recovered previous to the issuing of the attachment, if it be sufficient for that purpose:

1st. By paying to the plaintiff the proceeds of all sales of perishable property sold by him, or of any debts or credits collected by him, or so much as shall be necessary to satisfy the judgment.

2d. If any balance remain due, and an execution shall have been issued on the judgment, he shall sell under the execution so much of the property, real or personal, as may be necessary to satisfy the balance, if enough for

that purpose remain in his hands. Notices of the sales shall be given, and the sales conducted as in other cases of sales on execution.

SEC. 133. If, after selling all the property attached by him remaining in his hands, and applying the proceeds, together with the proceeds of any debts or credits collected by him, deducting his fees, to the payment of the judgment, any balance shall remain due, the sheriff shall proceed to collect such balance as upon an execution in other cases. Whenever the judgment shall have been paid, the sheriff, upon reasonable demands, shall deliver over to the defendant the attached property remaining in his hands, and any proceeds of the property attached unapplied on the judgment.

SEC. 134. If the execution be returned unsatisfied, in whole or in part, the plaintiff may prosecute any undertaking given, pursuant to section one hundred and twenty-three or section one hundred and thirty-seven, or he may proceed as in other cases upon the return of an execution.

SEC. 135. If the defendant recover judgment against the plaintiff, any undertaking received in the action, all the proceeds of sales and money collected by the sheriff, and all the property attached remaining in the sheriff's hands, shall be delivered to the defendant or his agent; the order of attachment shall be discharged, and the property released therefrom.

SEC. 136. Whenever the defendant shall have appeared in the action, he may apply, upon reasonable notice to the plaintiff, to the court or judge thereof for an order to discharge the same, upon the execution of the undertaking mentioned in the next section; and if the application be granted, all the proceeds of sales and moneys collected by the sheriff, and all the property attached remaining in his hands, shall be released from the attachment and delivered to the defendant upon the justification of the sureties on the undertaking, if required by the plaintiff.

SEC. 137. Upon such application, the defendant shall deliver to the court or judge an undertaking, executed by at least two sureties, residents and freeholders in the county, to the effect that the sureties will, on demand, pay to the plaintiff the amount of judgment that may be recovered against the defendant in the action, not exceeding the sum specified in the undertaking, which shall be sufficient to satisfy the amount claimed by the plaintiff in his complaint, and the costs. The sureties may be required to justify on application before the judge or court, and the property attached shall not be released from the attachment without their justification, if the same be required.

SEC. 138. The defendant may also, any time before the time for answering expires, apply on motion, upon reasonable notice to the plaintiff, to the judge who made the order, or the court in which the action is brought, that the attachment be discharged, on the ground that the writ was improperly issued.

SEC. 139. If the motion be made upon affidavits on the part of the defendant, but not otherwise, the plaintiff may oppose the same by affidavits or other evidence, in addition to those on which the order of attachment was made.

SEC. 140. If upon such application it shall satisfactorily appear that the writ of attachment was improperly issued, it shall be discharged.

SEC. 141. Upon the return of the writ of attachment, the defendant may file his answer under oath, putting in issue the truth of the matters contained in the affidavit, and the same shall be tried as a preliminary issue in the cause; and if the affidavit is not sustained, the attachment shall be dissolved, and the suit shall proceed as if commenced by an ordinary summons; and the plaintiff, upon the dissolution of the attachment, shall be adjudged to pay all the costs of the attachment and the damages sustained thereby, to be determined as in ordinary actions for damages.

SEC. 142. Upon the return of the writ of attachment, if it appear to the court that an excess of property has been attached, the court may, by order, reduce the amount to what will be sufficient to satisfy the demands of the plaintiff, with costs.

SEC. 143. The sheriff shall return the writ of attachment with the summons, if issued at the same time; otherwise, within twenty days after its receipt, with a certificate of his proceedings endorsed thereon or attached thereto. The provisions of this chapter shall not apply to any suits by attachment already commenced.

Deposit in Court.

SEC. 144. When it is admitted by the pleading or examination of a party that he has in his possession, or under his control, any money or other thing capable of delivery, which, being the subject of the litigation, is held by him as trustee for another party, or which belongs or is due to another party, the court may order the same, upon motion, to be deposited in court or delivered to such party, upon such conditions as may be just, subject to the further direction of the court.

SEC. 145. A receiver may be appointed by the court in which the action is pending, or by the judge thereof:

1st. Before judgment provisionally on the application of either party, when he establishes a *prima facie* right to the property, or an interest therein which is the subject of the action, and which is in possession of the adverse party, and the property, or its rents and profits, are in danger of being lost, or materially injured, or impaired.

2d. After judgment, to dispose of the property according to the judgment, or to preserve it during the pending of an appeal; and,

3d. In such other cases as are in accordance with the practice of courts of equity jurisdiction.

Of the Trial and Judgment in Civil Actions.

Judgment in General.

SEC. 146. A judgment is the final determination of the rights of the parties in the action or proceeding, and may be entered in term or vacation.

SEC. 147. Judgment may be given for or against one or more of several plaintiffs, and for or against one or more of several defendants; and it may,

when the justice of the case requires it, determine the ultimate rights of the parties on each side, as between themselves.

SEC. 148. In an action against several defendants, the court may, in its discretion, render judgment against one or more of them, leaving the action to proceed against the others, whenever a several judgment is proper.

SEC. 149. The relief granted to the plaintiff, if there be no answer, shall not exceed that which he shall have demanded in his complaint; but in any other case the court may grant him any relief consistent with the case made by the complaint and embraced within the issue.

SEC. 150. An action may be dismissed or a judgment of nonsuit entered in the following cases:

1st. By the plaintiff himself, at any time before trial, on the payment of costs, if a counter-claim has not been made. If a provisional remedy has been allowed, the undertaking shall thereupon be delivered by the clerk to the defendant, who may have his action thereon.

2d. By either party, upon the written consent of the other.

3d. By the court, when the plaintiff fails to appear on the trial, and the defendant appears and asks for the dismissal.

4th. By the court, when upon the trial, and before the final submission of the case, the plaintiff abandons it.

5th. By the court, upon motion of the defendant, when upon the trial the plaintiff fails to prove a sufficient case for the jury. The dismissal mentioned in the first two subdivisions shall be made by an entry in the clerk's register. Judgment may thereupon be entered accordingly.

SEC. 151. In every case other than those mentioned in the last section, the judgment shall be rendered on the merits.

Judgment upon Failure to Answer.

SEC. 152. Judgment may be had, if the defendant fail to answer the complaint, as follows:

1st. In an action arising upon contract for the recovery of money or damages only, if no answer has been filed with the clerk of the court within the time specified in the summons, or such further time as may have been granted; the clerk, upon application of the plaintiff, shall enter the default of the defendant, and immediately thereafter enter judgment for the amount specified in the summons, including the costs, against the defendant, or against one or more of several defendants, in the cases provided for in section thirty two.

2d. In other actions, if no answer has been filed with the clerk of the court within the time specified in the summons, or such further time as may have been granted; the clerk shall enter the default of the defendant, and thereafter the plaintiff may apply at the first or any subsequent term of the court for the relief demanded in the complaint. If the taking of an account or the proof of any fact be necessary to enable the court to give judgment or to carry the judgment into effect, the court may take the account or hear the proof, or may, in its discretion, order a reference for that purpose; and where the action is for the recovery of damages in

whole or in part, the court may order the damages to be assessed by a jury; or if, to determine the amount of damages, the examination of a long account be necessary, by a reference as above provided.

3d. In actions where the service of summons was by publication, the plaintiff, upon the expiration of the time designated in the order of publication, may, upon proof of the publication, and that no answer has been filed, apply for judgment, and the court shall thereupon require proof to be made of the demand mentioned in the complaint; and if the defendant be not a resident of the Territory, shall require the plaintiff or his agent to be examined on oath respecting any payments that have been made to the plaintiff, or to any one for his use, on account of such demands, and may render judgment for the amount which he is entitled to recover.

Of Issues, and the Manner of their Disposition.

SEC. 153. An issue arises when a fact or conclusion of law is maintained by the one party and is controverted by the other. Issues are of two kinds:

1. Of law; and
2. Of fact.

SEC. 154. An issue of law arises upon a demurrer to the complaint, or to some part thereof.

SEC. 155. An issue of fact arises:

1. Upon a material allegation in the complaint, controverted by the answer; or
2. Upon new matter in the answer.

SEC. 156. An issue of law shall be tried by the court, unless it be referred, upon consent, as provided in this chapter.

SEC. 157. An issue of fact shall be tried by a jury, unless a jury trial is waived or a reference be ordered, as provided in this chapter. Where there are issues both of law and fact to the same complaint, the issues of law shall be first disposed of.

SEC. 158. The clerk shall enter causes upon the calendar of the court according to the date of the issue. Causes once placed on the calendar for a general or special term, if not tried or heard at such term, shall remain upon the calendar from court to court until finally disposed of.

SEC. 159. Either party may bring the issue to trial or to a hearing; and in the absence of the adverse party, unless the court for good cause otherwise direct, may proceed with his case, and take a dismissal of the action or a verdict or judgment, as the case may require.

SEC. 160. A motion to postpone a trial on the ground of the absence of evidence, shall only be made upon affidavit, showing the materiality of the evidence expected to be obtained, and that due diligence has been used to procure it. The court may also require the moving party to state, upon affidavit, the evidence which he expects to obtain; and if the adverse party thereupon admit that such evidence would be given, and that it be con-

sidered as actually given on the trial, or offered and overruled as improper, the trial shall not be postponed: Provided, that the party obtaining a postponement of a trial in any court of record shall also, if required by the adverse party, consent that the testimony of any witness of such adverse party who is in attendance be taken by deposition before a judge or clerk of the court in which the case is pending, or before a notary public to be named by the court, which shall accordingly be done; and the testimony so taken may be read on the trial with the same effect and subject to the same objections as if the witnesses were produced.

Trial by Jury.

Formation of the Jury.

SEC. 161. When the action is called for trial by jury, the clerk shall prepare separate ballots containing the names of the jurors summoned who have appeared and not been excused, and deposit them in a box. He shall then draw from the box twelve names, and the persons whose names are drawn shall constitute the jury. If the ballots become exhausted before the jury is complete, or if from any cause a juror or jurors be excused or discharged, the sheriff shall summon, under the direction of the court, from the citizens of the county and not from bystanders, so many qualified persons as may be necessary to complete the jury. The jury shall consist of twelve persons, unless the parties consent to a less number. The parties may consent to any number not less than three. Such consent shall be entered by the clerk in the minutes of the trial.

SEC. 162. As soon as the jury is completed, an oath or affirmation shall be administered to the jurors, in substance that they each of them will well and truly try the matter in issue between , the plaintiff, and , the defendant, and a true verdict render according to the evidence.

SEC. 163. Either party may challenge the jurors, but when there are several parties on either side, they shall join in a challenge before it can be made. The challenges shall be to individual jurors, and shall either be peremptory or for cause. Each party shall be entitled to four peremptory challenges.

SEC. 164. Challenges for cause may be taken on one or more of the following grounds:

1st. A want of any of the qualifications prescribed by statute to render a person competent as a juror;

2d. Consanguinity or affinity within the third degree to either party;

3d. Standing in the relation of guardian and ward, master and servant, employer and clerk, or principal and agent to either party; or being a member of the family of either party; or a partner in business with either party; or being security on any bond or obligation for either party;

4th. Having served as a juror or been a witness on a previous trial between the same parties for the same cause of action;

5th. Interest on the part of the juror in the event of the action, or in the main question involved in the action;

6th. Having formed or expressed an unqualified opinion or belief as to the merits of the action;

7th. The existence of a state of mind in the juror evincing enmity against or bias to either party.

SEC. 165. Challenges for cause shall be tried by the court. The juror challenged, and any other person, may be examined as a witness on the trial of the challenge.

Conduct of the Trial.

SEC. 166. If, after the empannelling of the jury, and before verdict, a juror become sick, so as to be unable to perform his duty, the court may order him to be discharged. In that case the trial may proceed with the other jurors, or a new jury may be sworn, and the trial begin anew; or the jury may be discharged, and a new jury then or afterwards empannelled.

SEC. 167. In charging the jury, the court shall state to them all matters of law which it thinks necessary for their information in giving their verdict; and if it state the testimony of the case, it shall also inform the jury that they are the exclusive judges of all questions of fact. The court shall furnish to either party at the time, upon request, a statement in writing of the points of law contained in the charge; or shall sign at the time a statement of such points prepared and submitted by the counsel of either party.

SEC. 168. After hearing the charge, the jury may either decide in court or retire for deliberation. If they retire, they shall be kept together in a room provided for them, or some other convenient place, under the charge of one or more officers, until they agree upon their verdict or are discharged by the court. The officer shall, to the utmost of his ability, keep the jury together, separate from other persons; he shall not suffer any communication to be made to them, or make any himself, unless by order of the court, except to ask them if they have agreed upon their verdict; and he shall not, before the verdict is rendered, communicate to any person the state of their deliberations or the verdict agreed upon.

SEC. 169. Upon retiring for deliberation, the jury may take with them all papers (except depositions) which have been received as evidence in the cause, or copies of such papers as ought not, in the opinion of the court, to be taken from the person having them in possession; and they may also take with them notes of the testimony or other proceedings on the trial taken by themselves, or any of them; but none taken by any other person.

SEC. 170. After the jury have retired for deliberation, if there be a disagreement between them as to any part of the testimony, or if they desire to be informed of any point of law arising in the cause, they may require the officer to conduct them into court. Upon their being brought into court, the information required shall be given in the presence of, or after notice to, the parties or counsel.

SEC. 171. In all cases where a jury are discharged or prevented from giving a verdict by reason of accident or other cause during the progress of the trial, or after the cause is submitted to them, the action may be again tried immediately, or at a future time, as the court shall direct.

SEC. 172. While the jury are absent, the court may adjourn from time to time in respect to other business; but it shall nevertheless be deemed open for every purpose connected with the cause submitted to the jury, until a verdict is rendered or the jury discharged. The court may direct the jury to bring in a sealed verdict, at the opening of the court, in case of an agreement during a recess or adjournment for the day. A final adjournment of the court for the term shall discharge the jury.

SEC. 173. When the jury have agreed upon their verdict, they shall be conducted into court by the officer having them in charge. Their names shall be then called, and they shall be asked by the court or the clerk whether they have agreed upon their verdict; and if the foreman answer in the affirmative, they shall, on being required, declare the same.

SEC. 174. If the verdict be informal or insufficient, in not covering the whole issue or issues submitted, the verdict may be corrected by the jury, under the advice of the court, or the jury may be again sent out.

SEC. 175. When the verdict is given, and is not informal or insufficient, the clerk shall immediately record it in full in the minutes, and shall read it to the jury, and inquire of them whether it be their verdict. If any juror disagree, the jury shall be again sent out; but if no disagreement be expressed, the verdict shall be complete, and the jury shall be discharged from the case.

The Verdict.

SEC. 176. The verdict of a jury is either general or special. A general verdict is that by which they pronounce generally upon all or any of the issues, either in favor of the plaintiff or defendant; a special verdict is that by which the jury find the facts only, leaving the judgment to the court. The special verdict shall present the conclusions of fact as established by the evidence, and not the evidence to prove them; and those conclusions of fact shall be so presented as that nothing shall remain to the court but to draw from them conclusions of law.

SEC. 177. The court may instruct the jury to find a special verdict; when not so instructed, the verdict shall be general.

SEC. 178. When a verdict is found for the plaintiff in an action for the recovery of money, or for the defendant when a counter-claim for the recovery of money is established exceeding the amount of the plaintiff's claim as established, the jury shall also find the amount of the recovery.

SEC. 179. In an action for the recovery of specific personal property, if the property has not been delivered to the plaintiff, or the defendant, by his answer, claim a return thereof, the jury, if their verdict be in favor of the plaintiff, or if, being in favor of the defendant, they also find that he is entitled to a return thereof, shall find the value of the property, and may at the same time assess the damages, if any are claimed in the complaint or answer, which the prevailing party has sustained by reason of the taking or detention of such property.

SEC. 180. Upon receiving a verdict, an entry shall be made by the clerk

in the minutes of the court, specifying the time of trial, the names of the jurors and witnesses, and the verdict; and where a special verdict is found, either the judgment rendered thereon, or if the case be reserved for argument or further consideration, the order thus reserving it.

Trial by the Court.

SEC. 181. Trial by jury may be waived by the several parties to an issue of fact, in actions arising on contract; and with the assent of the court in other actions, in the manner following:

1st. By failing to appear at the trial;
2d. By written consent, in person or by attorney, filed with the clerk;
3d. By oral consent in open court, entered in the minutes. The court may prescribe by rule what shall be deemed a waiver in other cases.

SEC. 182. Upon the trial of an issue of fact by the court, its decision shall be given in writing, and filed with the clerk, within ten days after the trial took place. In giving the decision, the facts found and the conclusions of law shall be separately stated. Judgment upon the decision shall be entered accordingly.

SEC. 183. On a judgment upon an issue of law, if the taking of an account be necessary to enable the court to complete the judgment, a reference may be ordered.

Of References, and Trial by Referees.

SEC. 184. A reference may be ordered upon the agreement of the parties filed with the clerk, or entered in the minutes:

1. To try any or all of the issues in an action or proceeding, whether of fact or of law; and to report a judgment thereon;
2. To ascertain a fact necessary to enable the court to proceed and determine the case.

SEC. 185. When the parties do not consent, the court may, upon the application of either, or of its own motion, direct a reference in the following cases:

1. When the trial of an issue of fact requires the examination of a long account on either side; in which case the referees may be directed to hear and decide the whole issue, or report upon any specific question of fact involved therein.
2. When the taking of an account is necessary for the information of the court before judgment, or for carrying a judgment or order into effect.
3. When a question of fact, other than upon the pleadings, arises upon motion or otherwise, in any stage of the action; or,
4. When it is necessary for the information of the court in a special proceeding.

SEC. 186. A reference may be ordered to any person or persons, not exceeding three, agreed upon by the parties. If the parties do not agree,

the court or judge shall appoint one or more referees, not exceeding three, who reside in the county in which the action or proceeding is triable, and against whom there is no legal objection.

SEC. 187. Either party may object to the appointment of any person as referee, on one or more of the following grounds:

1. A want of any of the qualifications prescribed by statute to render a person competent as a juror.
2. Consanguinity or affinity within the third degree to either party.
3. Standing in the relation of guardian and ward, master and servant, employer and clerk, or principal and agent to either party; or being a member of the family of either party; or a partner in business with either party; or being security on any bond or obligation for either party.
4. Having served as a juror, or been a witness on any trial between the same parties for the same cause of action.
5. Interest on the part of such person in the event of the action, or in the main question involved in the action.
6. Having formed or expressed an unqualified opinion or belief as to the merits of the action.
7. The existence of a state of mind in such person evincing enmity against or bias to either party.

SEC. 188. The objections taken to the appointment of any person as referee shall be heard and disposed of by the court. Affidavits may be read, and any person examined as a witness, as to such objections.

SEC. 189. The referees shall make their report within ten days after the testimony before them is closed. Their report upon the whole issue shall stand as the decision of the court, and upon filing the report with the clerk of the court, judgment may be entered therein in the same manner as if the action had been tried by the court. The decision of the referees may be excepted to and reviewed in like manner as if made by the court. When the reference is to report the facts, the report shall have the effect of a special verdict.

General Provisions relating to Trials.

Exceptions.

SEC. 190. An exception is an objection taken at the trial to a decision upon a matter of law, whether such trial be by jury, court, or referees, and whether the decision be made during the formation of a jury, or in the admission of evidence, or in the charge to a jury, or at any other time from the calling of the action for trial to the rendering of the verdict or decision. But no exception shall be regarded on a motion for a new trial, or on an appeal, unless the exception be material, and affect the substantial rights of the parties.

SEC. 191. The point of the exception shall be particularly stated, and may be delivered in writing to the judge, or if the party require it, shall be written down by the clerk; when delivered in writing, or written down by the clerk, it shall be made conformable to the truth or be at the time corrected until it is so made conformable. When not delivered in writing, or

written down as above, it may be entered in the judge's minutes and afterwards settled in a statement of the case, as provided in this chapter.

SEC. 192. No particular form of exception shall be required. The objection shall be stated, with so much of the evidence or other matter as is necessary to explain it, but no more, and the whole as briefly as possible.

SEC. 193. When a cause has been tried by the court, or by referees, and the decision or report is not made immediately after the closing of the testimony, the decision or report shall be deemed excepted to, on motion for a new trial or on appeal, without any special notice that an exception is taken thereto.

New Trials.

SEC. 194. A new trial is a reëxamination of an issue of fact in the same court, after a trial and decision by a jury, court, or referees.

SEC. 195. The former verdict or other decision may be vacated and a new trial granted, on the application of the party aggrieved, for any of the following causes materially affecting the substantial rights of such party:

1. Irregularity in the proceedings of the court, jury, or adverse party, or any order of the court, or abuse of discretion by which either party was prevented from having a fair trial.
2. Misconduct of the jury.
3. Accident or surprise which ordinary prudence could not have guarded against.
4. Newly discovered evidence, material for the party making the application, which he could not, with reasonable diligence, have discovered and produced at the trial.
5. Excessive damages, appearing to have been given under the influence of passion or prejudice;
6. Insufficiency of the evidence to justify the verdict, or other decision; or that it is against law;
7. Error in law occurring at the trial, and excepted to by the party making the application.

SEC. 196. When the application is made for a cause mentioned in the first, second, third, and fourth subdivisions of the last section, it shall be made upon affidavit; for any other cause, it shall be made upon a statement prepared as provided in the next section.

SEC. 197. The party intending to move for a new trial shall give notice of the same within two days after the trial, and shall, within five days after such notice, or such other time as the court shall direct, prepare and file with the clerk the affidavit required by the last section, or a statement of the grounds upon which he intends to rely. If no affidavit or statement be filed within five days after the notice, the right to move for a new trial shall be deemed waived. The statement shall contain so much of the evidence, or reference thereto, as may be necessary to explain the grounds taken, and no more. Such statement, when containing any portion of the evidence of the case, and not agreed to by the adverse party, shall be settled by the judge upon notice. On the argument, reference may also be

made to the pleadings, depositions, and documentary evidence on file, and to the minutes of the court. If the application be made upon affidavits filed, the adverse party may use counter-affidavits on the hearing. Any counter-affidavits shall be filed with the clerk, one day at least previous to the hearing.

SEC. 198. The application for a new trial shall be made at the earliest period practicable, after filing the affidavit or statement.

The Manner of giving and entering Judgment.

SEC. 199. When trial by jury has been had, judgment shall be entered by the clerk, in conformity to the verdict, within twenty-four hours after the rendition of the verdict, unless the court order the case to be reserved for argument or further consideration, or grant a stay of proceedings.

SEC. 200. When the case is reserved for argument or further consideration, as mentioned in the last section, it may be brought by either party before the court for argument, as the court shall direct.

SEC. 201. If a counter-claim, established at the trial, exceed the plaintiff's demand so established, judgment for the defendant shall be given for the excess; or if it appear that the defendant is entitled to any other affirmative relief, judgment shall be given accordingly.

SEC. 202. In an action to recover the possession of personal property, judgment for the plaintiff may be for the possession or the value thereof, in case a delivery cannot be had, and damages for the detention. If the property have been delivered to the plaintiff, and the defendant claim a return thereof, judgment for the defendant may be for a return of the property, or the value thereof in case a return cannot be had, and damages for taking and withholding the same.

SEC. 203. The clerk shall keep among the records of the court a book for the entry of judgments, to be called the "judgment book," in which each judgment shall be entered, and shall specify clearly the relief granted, or other determination of the action.

SEC. 204. If a party die after a verdict or decision upon any issue of fact, and before a judgment, the court may nevertheless render judgment thereon. Such judgment shall not be a lien on the real property of the deceased party, but shall be payable in the course of administration on his estate.

SEC. 205. Immediately after entering the judgment, the clerk shall attach together and file the following papers, which shall constitute the judgment-roll:

1st. In case the complaint be not answered by any defendant, the summons, with the affidavit or proof of service, and the complaint, with a memorandum endorsed on the complaint, that the default of the defendant in not answering was entered, and a copy of the judgment;

2d. In all other cases, the summons, pleadings, and a copy of the judgment, and any orders relating to a change of the parties.

SEC. 206. Immediately after filing a judgment-roll, the clerk shall make the proper entries of the judgment, under appropriate heads, in the docket kept by him; and from the time the judgment is docketed, it shall become a lien upon all the real property of the judgment debtor, not exempt from execution, in the county, owned by him at the time, or which he may afterwards acquire, until the said lien expires. The lien shall continue for two years, unless the judgment be previously satisfied.

SEC. 207. The docket mentioned in the last section is a book which the clerk shall keep in his office, with each page divided into eight columns, and headed as follows: Judgment debtors; judgment creditors; judgment; time of entry; where entered in judgment-book; appeals when taken; judgment of appellate court; satisfaction of judgment, when entered. If judgment be for the recovery of money or damages, the amount shall be stated in the docket under the head of judgment; if the judgment be for any other relief, a memorandum of the general character of the relief granted shall be stated. The names of the defendants shall be entered in the docket in alphabetical order.

SEC. 208. The docket kept by the clerk shall be open at all times during office hours for the inspection of the public without charge; and it shall be the duty of the clerk to arrange the several dockets kept by him in such a manner as to facilitate their inspection.

SEC. 209. A transcript of the original docket certified by the clerk may be filed with the recorder of any other county, and from the time of the filing the judgment shall become a lien upon all the real property of the judgment debtor, not exempt from execution in such county, owned by him at the time, or which he may afterwards acquire, until the said lien expires. The lien shall continue for two years, unless the judgment be previously satisfied.

SEC. 210. Satisfaction of a judgment may be entered in the clerk's docket upon an execution returned satisfied, or upon an acknowledgment of satisfaction filed with the clerk, made in the manner of an acknowledgment of a conveyance of real property, by the judgment creditor; or within one year after the judgment by the attorney, unless a revocation of his authority be previously filed. Whenever a judgment shall be satisfied in fact, otherwise than upon an execution, it shall be the duty of the party or attorney to give such acknowledgment, and upon motion the court may compel it, or may order the entry of satisfaction to be made without it.

Of the Execution of the Judgment in Civil Actions.

SEC. 211. The party in whose favor judgment is given may, at any time within five years after the entry thereof, issue a writ of execution for its enforcement, as prescribed in this chapter.

SEC. 212. The writ of execution shall be issued in the name of the Territory, sealed with the seal of the court, and subscribed by the clerk, and shall be directed to the sheriff, and shall intelligibly refer to the judgment, stating the court, the county where the judgment-roll is filed, the name of the parties, the judgment, and if it be for money, the amount thereof, and

the amount actually due thereon, and shall require the sheriff substantially as follows:

1. If it be against the property of the judgment debtor, it shall require the sheriff to satisfy the judgment, with interest, out of the personal property of such debtor, and if sufficient personal property cannot be found, then out of his real property; or if the judgment be a lien upon real property, then out of the real property belonging to him on the day when the judgment was docketed, or if the execution be issued to a county other than the one in which the judgment was recovered, on the day when the transcript of the docket was filed in the office of the recorder of such county, stating such day, or at anytime thereafter;

2. If it be against real or personal property in the hands of the personal representatives, heirs, devisees, legatees, tenants of real property, or trustees, it shall require the sheriff to satisfy the judgment, with interest, out of such property;

3. If it be against the person of the judgment debtor, it shall require the sheriff to arrest such debtor and commit him to the jail of the county, until he pay the judgment, with interest, or be discharged according to law;

4. If it be for the delivery of the possession of real or personal property, it shall require the sheriff to deliver the possession of the same, particularly describing it, the party entitled thereto, and may at the same time require the sheriff to satisfy any costs, damages, rents, or profits recovered by the same judgment, out of the personal property of the party against whom it was rendered, and the value of the property for which the judgment was recovered, to be specified therein, if a delivery thereof cannot be had; and if sufficient personal property cannot be found, then out of real property, as provided in the first subdivision of this section.

SEC. 213. When a writ of execution is issued on a judgment recovered against two or more persons, in an action upon a joint contract, in which action all the defendants were not served with summons or did not appear, it shall direct the sheriff to satisfy the judgment out of the joint property of all the defendants, and the individual property only of the defendants who were served or who appeared in the action. In other respects, the writ shall contain the directions specified in the first subdivision of the last section.

SEC. 214. The execution may be made returnable at any time not less than ten nor more than sixty days after its receipt by the sheriff, to the clerk with whom the judgment-roll is filed.

SEC. 215. Where a judgment requires the payment of money, or the delivery of real or personal property, the same shall be enforced in those respects by execution. Where it requires the performance of any other act, a certified copy of the judgment may be served upon the party against whom it is given, or upon the person or officer who is required thereby, or by law, to obey the same, and his obedience thereto enforced.

SEC. 216. After the lapse of five years from the entry of judgment, an execution shall be issued only by leave of the court, on motion. Such leave shall not be given unless it be established by the oath of the party, or other proof, that the judgment, or some part thereof, remains unsatisfied and due.

SEC. 217. Notwithstanding the death of a party after the judgment,

execution thereon against his property may, upon permission granted by the probate court, be issued and executed in the same manner and with the same effect as if he were still living.

SEC. 218. Where the execution is against the property of the judgment debtor, it may be issued to the sheriff of any county in the Territory. Where it requires the delivery of real or personal property, it shall be issued to the sheriff of the county where the property, or some part thereof, is situated. Executions may be issued at the same time to different counties.

SEC. 219. All property, real and personal, of the judgment debtor, not exempt by law, shall be liable to execution. Until a levy, property shall not be affected by the execution.

SEC. 220. If the property levied on be claimed by a third person as his property, the sheriff shall summon from his county six persons qualified as jurors between the parties, to try the validity of the claim. He shall also give notice of the claim, and of the time of trial to the plaintiff, who may appear and contest the claim before the jury. The jury and the witnesses shall be sworn by the sheriff, and if their verdict be in favor of the claimant, the sheriff may relinquish the levy, unless the judgment creditor give him a sufficient indemnity for proceeding thereon. The fees of the jury, the sheriff, and the witnesses, shall be paid by the claimant, if the verdict be against him; otherwise, by the plaintiff. On the trial the defendant and the claimant may be examined by the plaintiff as witnesses.

SEC. 221. The property mentioned in chapter thirty-seven of this code, entitled "Of Exemption," shall be exempt from such execution, except in the manner in said chapter specified, and as to all property so exempt, the proceedings on such execution shall be in accordance with the provisions of said chapter.

SEC. 222. The sheriff shall execute the writ against the property of the judgment debtor, by levying on a sufficient amount of property, if there be sufficient; collecting or selling the things in action, and selling the other property, and paying to the plaintiff or his attorney so much of the proceeds as will satisfy the judgment, or depositing the amount with the clerk of the court; any excess in the proceeds over the judgment and the sheriff's fees shall be returned to the judgment debtor. When there is more property of the judgment debtor than is sufficient to satisfy the judgment and the sheriff's fees within the view of the sheriff, he shall levy only on such part of the property as the judgment debtor may indicate: Provided, that the judgment debtor be present at, and indicate at the time of the levy such part; and provided, that the property indicated be amply sufficient to satisfy such judgment and fees.

SEC. 223. Before the sale of property on execution, notice thereof shall be given as follows:

1st. In case of perishable property, by posting written notice of the time and place of sale in three public places of the precinct or county where the sale is to take place, for such a time as may be reasonable, considering the character and condition of the property.

2d. In case of other personal property, by posting a similar notice in three

public places of the precinct or county where the sale is to take place, not less than five nor more than ten days successively;

3d. In case of real property, by posting a similar notice, particularly describing the property, for twenty days successively, in three public places of the precinct or county where the property is situated, and also where the property is to be sold; and publishing a copy thereof once a week for the same period in a newspaper in the county, if there be one.

SEC. 224. An officer selling without the notice prescribed by the last section, shall forfeit five hundred dollars to the aggrieved party, in addition to his actual damages; and a person wilfully taking down or defacing the notice posted, if done before the sale or the satisfaction of the judgment (if the judgment be satisfied before sale), shall forfeit five hundred dollars.

SEC. 225. All sales of property under execution shall be made at auction to the highest bidder, and shall be made between the hours of nine in the morning and five in the afternoon; after sufficient property has been sold to satisfy the execution, no more shall be sold. Neither the officer holding the execution nor his deputy shall become a purchaser, or be interested in any purchase at such sale. When the sale is of personal property capable of manual delivery, it shall be within view of those who attend the sale, and be sold in such parcels as are likely to bring the highest price; and when the sale is of real property, and consisting of several known lots or parcels, they shall be sold separately; or when a portion of such real property is claimed by a third person, and he requires it to be sold separately, such portion shall be thus sold. The judgment debtor, if present at the sale, may also direct the order in which property, real or personal, shall be sold, when such property consists of several known lots or parcels, or of articles which can be sold to advantage separately; and the sheriff shall be bound to follow such directions.

SEC. 226. If a purchaser refuse to pay the amount bid by him for property struck off to him at a sale under execution, the officer may again sell the property at any time to the highest bidder, and if any loss be occasioned thereby, the officer may recover the amount of such loss, with costs, by motion upon previous notice of five days before any court, or before any justice of the peace, if the same shall not exceed his jurisdiction.

SEC. 227. Such court or justice shall proceed in a summary manner and give judgment, and issue execution therefor forthwith, but the defendant may claim a jury. And the same proceedings may be had against any subsequent purchaser who shall refuse to pay, and the officer may, in his discretion, thereafter reject the bid of any person so refusing.

SEC. 228. The two preceding sections shall not be construed to make the officer liable for any more than the amount bid by the second or subsequent purchaser, and the amount collected from the purchaser refusing to pay.

SEC. 229. When the purchaser of any personal property capable of manual delivery shall pay the purchase money, the officer making the sale shall deliver to the purchaser the property, and if desired, shall execute and deliver to him a certificate of the sale and payment. Such certificate shall convey to the purchaser all the right, title, and interest which the debtor had in and to such property on the day the execution was levied.

SEC. 230. When the purchaser of any personal property not capable of manual delivery shall pay the purchase money, the officer making the sale shall execute and deliver to the purchaser a certificate of sale and payment. Such certificate shall convey to the purchaser all right, title, and interest which the debtor had in and to such property on the day the execution was levied.

SEC. 231. Upon a sale of real property, when the estate is less than a leasehold of two years' unexpired term, the sale shall be absolute. In all other cases, the real property shall be subject to redemption, as provided in this chapter. The officer shall give to the purchaser a certificate of the sale, containing

1. A particular description of the real property sold;
2. The price bid for each distinct lot or parcel;
3. The whole price paid;
4. When subject to redemption, it shall be so stated, a duplicate of which certificate shall be filed by the officer with the recorder of the county.

SEC. 232. Property sold subject to redemption, as provided in the last section, or any part sold separately, may be redeemed in the manner hereinafter provided, by the following persons, or their successors in interest:

1. The judgment debtor, or his successor in interest, in the whole or any part of the property.
2. A creditor, having a lien by judgment or mortgage on the property sold, or on some share or part thereof, subsequent to that on which the property was sold. The persons mentioned in the second subdivision of this section are, in this chapter, termed redemptioners.

SEC. 233. The judgment debtor, or a redemptioner, may redeem the property from the purchaser within six months after the sale, on paying the purchaser the amount of his purchases with eighteen per cent. thereon in addition, together with the amount of any assessments or taxes which the purchaser may have paid thereon after the purchase, and interest on such amount; and if the purchaser be also a creditor, having a lien prior to that of the redemptioner, the amount of such lien with interest.

SEC. 234. If the property be so redeemed by a redemptioner, either the judgment debtor or another redemptioner may, within sixty days after the last redemption, again redeem it from the last redemptioner, on paying the sum paid on such last redemption, with six per cent. thereon in addition, and the amount of any assessments or taxes which the said last redemptioner may have paid thereon, after the redemption by him, with interest on such amount; and the amount of any lien held by said last redemptioner prior to his own, with interest. The property may be again, and as often as the debtor or any redemptioner is so disposed, redeemed from any previous redemptioner, within sixty days after the last redemption, on paying the sum paid on the last previous redemption, with six per cent. thereon in addition, and the amount of any assessments or taxes which the said last previous redemptioner paid after the redemption by him, with interest thereon; and the amount of any liens held by the said last redemptioner, previous to his own, with interest. Notice of redemption shall be given to the sheriff. If no redemption be made within six months after the sale, the purchaser shall be entitled to a conveyance; or if so redeemed, whenever

sixty days have elapsed, and no other redemption has been made, and notice thereof given, the time for redemption shall have expired, and the last redemptioner shall be entitled to a sheriff's deed. If the debtor redeem at any time before the time for redemption expires, the effects of the sale shall be terminated, and he be restored to his estate.

SEC. 235. The payment mentioned in the last two sections may be made to the purchaser or redemptioner, as the case may be, or for him to the officer who made the sale; and a tender of the money shall be equivalent to payment.

SEC. 236. A redemptioner shall produce to the officer or person from whom he seeks to redeem, and serve with his notice to the sheriff:

1. A copy of the docket of the judgment under which he claims the right to redeem, certified by the clerk of the court where the judgment is docketed; or if he redeem upon a mortgage or other lien, a note of the record thereof certified by the recorder.
2. A copy of any assignment necessary to establish his claim, verified by the affidavit of himself or of a subscribing witness thereto; and
3. An affidavit by himself or his agent, showing the amount then actually due on the lien.

SEC. 237. Until the expiration of the time allowed for redemption, the court may restrain the commission of waste on the property, by order granted with or without notice, on the application of the purchaser or the judgment creditor. But it shall not be deemed waste for the person in possession of the property at the time of sale, or entitled to possession afterwards during the period allowed for redemption, to continue to use it in the same manner in which it was previously used; or to use it in the ordinary course of husbandry; or to make the necessary repairs of buildings thereon; or to use wood or timber on the property therefor; or for the repair of fences; or for fuel in the family—while he occupies the property.

SEC. 238. The purchaser from the time of the sale until a redemption, and a redemptioner from the time of his redemption until another redemption, shall be entitled to receive from the tenant in possession the rents of the property sold, or the value of the use and occupation thereof.

SEC. 239. If the purchaser of real property sold on execution, or his successor in interest, be evicted therefrom in consequence of irregularity in the proceedings concerning the sale, or of the reversal or discharge of the judgment, he may recover the price paid, with interest, from the judgment creditor. If the recovery be in consequence of the irregularity in the proceedings concerning the sale, the judgment may, by order of the court, upon notice to the judgment debtor, be revived, and a new execution issued for the price paid on the sale, with interest. Such judgment shall be a lien on the real estate of the judgment debtor only from the time of its revival.

Proceedings Supplementary to the Execution.

SEC. 240. When an execution against property of the judgment debtor, or of any one of several debtors in the same judgment, issued to the sheriff of the county where he resides, or if he do not reside in this Territory, to

the sheriff of the county where the judgment-roll is filed, is returned unsatisfied in whole or in part, the judgment creditor, at any time after such return is made, shall be entitled to an order from the judge of the court, requiring such judgment debtor to appear and answer concerning his property before such judge, or a referee appointed by him, at a time and place specified in the order; but no judgment debtor shall be required to attend before a judge or referee out of the county in which he resides, when proceedings are taken under the provisions of this chapter.

SEC. 241. After the issuing of an execution against property, and upon proof by affidavit of a party, or otherwise to the satisfaction of the court or a judge thereof, that any judgment debtor has property which he unjustly refuses to apply towards the satisfaction of the judgment, such court or judge may, by an order, require the judgment debtor to appear at a specified time and place before such judge, or a referee appointed by him, to answer concerning the same; and such proceedings may thereupon be had for the application of the property of the judgment debtor towards the satisfaction of the judgment, as are provided upon the return of an execution.

SEC. 242. After the issuing of an execution against property, any person indebted to the judgment debtor may pay to the sheriff the amount of his debt, or so much thereof as may be necessary to satisfy the execution; and the sheriff's receipt shall be a sufficient discharge for the amount so paid.

SEC. 243. After the issuing or return of an execution against property of the judgment debtor, or of any one of the several debtors in the same judgment, and upon proof by affidavit or otherwise to the satisfaction of the judge that any person or corporation has property of such judgment debtor, or is indebted to him in an amount exceeding fifty dollars, the judge may, by an order, require such person or corporation, or any officer or member thereof, to appear at a specified time and place before him, or a referee appointed by him, and answer concerning the same.

SEC. 244. Witnesses may be required to appear and testify before the judge or referee upon any proceeding under this chapter in the same manner as upon the trial of an issue.

SEC. 245. The judge or referee may order any property of the judgment debtor, not exempt from execution, in the hands of such debtor or any other person, or due to the judgment debtor, to be applied towards the satisfaction of the judgment, except that the earnings of the debtor for his personal services, at any time within thirty days next preceding the order, shall not be so applied when it shall be made to appear by the debtor's affidavit, or otherwise, that such earnings are necessary for the use of a family supported wholly or partly by his labor.

SEC. 246. If it appear that a person or corporation alleged to have property of the judgment debtor, or indebted to him, claims an interest in the property adverse to him, or denies the debt, the court or judge may authorize, by an order made to that effect, the judgment creditor to institute an action against such person or corporation for the recovery of such interest or debt; and the court or judge may, by order, forbid a transfer or other disposition of such interest or debt, until an action can be commenced and prosecuted to judgment. Such order may be modified or vacated by the

judge granting the same, or the court in which the action is brought, at any time upon such terms as may be just. In addition to the remedy provided in this and the six preceding sections, the plaintiff in any such execution may proceed against the defendants therein and other parties by original complaint in the nature of a creditor's bill in equity, to obtain satisfaction of his execution after the same shall have been returned unsatisfied in whole or in part, as the case may be.

SEC. 247. If any person, party, or witnesses disobey an order of the referee, properly made in the proceedings before him under this chapter, he may be punished by the court or judge ordering the reference, for a contempt.

Actions in Particular Cases.

Actions for the Foreclosure of Mortgages.

SEC. 248. In an action for the foreclosure or satisfaction of a mortgage of real property, or the satisfaction of a lien or incumbrance upon property, real or personal, the court shall have power by its judgment to direct a sale of the property, or any part of it, and to direct the application of the proceeds to the payment of the amount due on the mortgage, lien, or incumbrance, with costs, and execution for the balance.

SEC. 249. If there be surplus money remaining after payment of the amount due on the mortgage, lien, or incumbrance, with costs, the court may cause the same to be paid to the person entitled to it, and in the meantime may direct it to be deposited in court.

SEC. 250. If the debt for which the mortgage, lien, or incumbrance is held, be not all due, so soon as sufficient of the property has been sold to pay the amount due, with costs, the sale shall cease; and afterwards, as often as more becomes due for principal or interest, the court may, on motion, order more to be sold. But if the property cannot be sold in portions without injury to the parties, the whole may be ordered to be sold in the first instance, and the entire debt and costs paid, there being a rebate of interest where such rebate is proper.

Actions, for Nuisance, Waste, and Wilful Trespass in certain Cases on Real Property.

SEC. 251. Anything which is injurious to health, or indecent or offensive to the senses, or an obstruction to the free use of property, so as to interfere with the comfortable enjoyment of life or property, is a nuisance and the subject of an action. Such action may be brought by any person whose property is injuriously affected, or whose personal enjoyment is lessened by the nuisance; and by the judgment the nuisance may be enjoined or abated, as well as damages recovered.

SEC. 252. If a guardian, tenant for life or years, joint tenant, or tenant in common of real property, commit waste thereon, any person aggrieved by the waste may bring an action against him therefor, in which action there may be judgment for treble damages.

SEC. 253. Any person who shall cut down or carry off any wood or underwood, tree or timber, or girdle or otherwise injure any tree or timber on the land of another person, or on the street or highway in front of any person's house, village lot, or cultivated grounds; or on the commons or public grounds of any village or town; or on the street or highway in front thereof, without lawful authority—shall be liable to the owner of such land, or to such village or town, for treble the amount of damages which may be assessed therefor, in a civil action, in any court having jurisdiction.

SEC. 254. Nothing in the last section shall authorize the recovery of more than the just value of the timber taken from uncultivated woodland, for the repair of a public highway or bridge upon the land or adjoining it.

SEC. 255. If a person recover damages for a forcible or unlawful entry in or upon, or detention of, any building or any cultivated real property, judgment may be entered for three times the amount at which the actual damages are assessed.

Actions to determine conflicting Claims to Real Property and other Provisions relating to Actions concerning Real Estate.

SEC. 256. An action may be brought by any person in possession, by himself or his tenant, of real property, against any person who claims an estate or interest therein adverse to him, for the purpose of determining such adverse claim, estate, or interest.

SEC. 257. If the defendant in such action disclaim, in his answer, any interest or estate in the property, or suffer judgment to be taken against him without answer, the plaintiff shall not recover costs.

SEC. 258. In an action for the recovery of real property, where the plaintiff shows a right to recover at the time the action was commenced, but it appears that his right has terminated during the pendency of the action, the verdict and judgment shall be according to the fact; and the plaintiff may recover damages for withholding the property.

SEC. 259. When damages are claimed for withholding the property recovered, upon which permanent improvements have been made by a defendant or those under whom he claims, holding under color of title adversely to the claims of the plaintiff in good faith, the value of such improvements shall be allowed as a set-off against such damages.

SEC. 260. The court in which an action is pending for the recovery of real property, may, on motion, upon notice by either party, for good cause shown, grant an order allowing such party the right to enter upon the property and make survey and measurement thereof for the purposes of the action.

SEC. 261. The order shall describe the property, and a copy thereof shall be served on the owner or occupants, and thereupon such party may enter upon the property, with necessary surveyors or assistants, and may make such survey and measurements; but if any unnecessary injury be done to the property, he shall be liable therefor.

SEC. 262. A mortgage of real property shall not be deemed a conveyance, whatever its terms, so as to enable the owner of the mortgage to recover possession of the real property without a foreclosure and sale.

SEC. 263. The court may, by injunction, on good cause shown, restrain the party in possession from doing any act to the injury of real property during the foreclosure of a mortgage thereon, or after a sale on execution before a conveyance.

SEC. 264. When real property shall have been sold on execution, the purchaser thereof, or any person who may have succeeded to his interest, may, after his estate becomes absolute, recover damages for injury to the property by the tenant in possession after sale and before possession is delivered under the conveyance.

SEC. 265. An action for the recovery of real property against a person in possession cannot be prejudiced by any alienation made by such person either before or after the commencement of the action.

Actions for the Partition of Real Property.

SEC. 266. When several persons hold and are in possession of real property as joint tenants or as tenants in common, in which one or more of them have an estate of inheritance or for life, an action may be brought by one or more of such persons for a partition thereof, according to the respective rights of the persons interested therein, and for sale of such property or a part of it, if it appear that a partition cannot be made without great prejudice to the owners.

SEC. 267. The interests of all persons in the property, whether such persons be known or unknown, shall be set forth in the complaint specifically and particularly, as far as known to the plaintiff, and if one or more of the parties, or the share or quantity of interest of any of the parties, be unknown to the plaintiff, or be uncertain or contingent, or the ownership of the inheritance depend upon an executory devise, or the remainder be a contingent remainder, so that such parties cannot be named, that fact shall be set forth in the complaint.

SEC. 268. No persons who have or claim any liens upon the property by mortgage, judgment, or otherwise, need be made parties to the action, unless such liens be matters of record.

SEC. 269. Immediately after filing the complaint, the plaintiff shall file with the recorder of the county in which the property is situated a notice of the pendency of the action, containing the names of the parties so far as known, the object of the action, and a description of the property to be affected thereby. From the time of the filing it shall be deemed notice to all persons.

SEC. 270. The summons shall be directed to all the joint tenants and tenants in common, and all persons having any interest in or any liens of record by mortgage, judgment, or otherwise, upon the property or upon any particular portion thereof; and generally, to all persons unknown who have or claim to have any interest in the property.

SEC. 271. If a party having a share or interest is unknown, or any one of the known parties reside out of the Territory or cannot be found therein, and such fact is made to appear by affidavit, the summons may be served on such absent or unknown party by publication, as in other cases. When publication is made, the summons as published shall be accompanied by a brief description of the property which is the subject of the action.

SEC. 272. The defendants who have been personally served with the summons and a copy of the complaint, shall set forth in their answers fully and particularly the nature and extent of their interest in the property; and if such defendants claim a lien upon the property by mortgage, judgment, or otherwise, they shall state the amount and date of the same, and the amount remaining due thereon, and whether the amount has been secured in any other way or not; and if secured, the extent and nature of the security; or they shall be deemed to have waived their right to such lien.

SEC. 273. The rights of the several parties, plaintiffs as well as defendants, may be put in issue, tried, and determined by such action; and when a sale of the premises is necessary, the title shall be ascertained by proof to the satisfaction of the court before the judgment of sale shall be made; and where service of the complaint has been made by publication, like proof shall be required of the right of the absent or unknown parties before such judgment is rendered, except that where there are several unknown persons having an interest in the property, their rights may be considered together in the action, and not as between themselves.

SEC. 274. The plaintiff shall produce to the court, on the hearing of the case, the certificate of the recorder of the county where the property is situated, showing whether there were or not any liens outstanding of record upon the property, or any part thereof, at the time of the commencement of the action.

SEC. 275. If it appear by the certificate of the recorder that there were outstanding liens of record at the time of the commencement of the action, and the persons holding or claiming such liens are not made parties to the action, the court shall either order such parties to be brought in by an amendment or supplemental complaint, or appoint a referee to ascertain whether their liens have been paid, or if not paid, what amount remains due, and their order among the liens held by the parties who have appeared and answered; and whether the amount remaining due thereon has been secured in any way, and if secured, the extent and nature of the security.

SEC. 276. The plaintiff shall cause a notice to be served a reasonable time previous to the day for appearance before the referee appointed, as provided in the last section, on each person having outstanding liens of record, who is not a party to the action, to appear before the referee at a specified time and place, to make proof by his own affidavit, or otherwise, of the true amount due, or to become due, contingently or absolutely thereon. In case such person be absent, or his residence be unknown, service may be made by publication or notice to his agents, under the direction of the court, in such manner as may be proper. The report of the referee thereon shall be made to the court, and shall be confirmed, modified, or set aside, and a new reference ordered, as the justice of the case may require.

SEC. 277. If it be alleged in the complaint and be established by evidence, or if it appear by the evidence without such allegation in the complaint, to the satisfaction of the court, that the property, or any part of it, is so situated that partition cannot be made without great prejudice to the owners, the court may order a sale thereof. Otherwise, upon the requisite proofs being made, it shall order a partition according to the respective rights of the parties, as ascertained by the court, and appoint three referees therefor; and shall designate the portion to remain undivided for the owners whose interests remain unknown or are not ascertained.

SEC. 278. In making the partition, referees shall divide the property and allot the several portions thereof to the respective parties, quality and quantity relatively considered, according to the respective rights of the parties, as determined by the court, designating the several portions by proper landmarks; and may employ a surveyor, with the necessary assistants, to aid them therein.

SEC. 279. The referees shall make a report of their proceedings, specifying therein the manner of executing their trust, describing the property divided and the shares allotted to each party, with a particular description of each share.

SEC. 280. The court may confirm or set aside the report, and if necessary appoint new referees. Upon the report being confirmed, judgment shall be rendered that such partition be effectual for ever; which judgment shall be binding and conclusive:

1st. On all persons named as parties to the action and their legal representatives, who have at the time any interest in the property divided, or any part thereof, as owners in fee, or as tenants for life or for years; or as entitled to the reversion, remainder, or the inheritance of such property, or of any part thereof, after the termination of a particular estate therein; and who by any contingency may be entitled to a beneficial interest in the property, or who have an interest in any undivided share thereof as tenants for years or for life;

2d. On all persons interested in the property who may be unknown, to whom notice shall have been given of the action for partition by publication; and

3d. On all other persons claiming from such parties or persons, or either of them.

SEC. 281. But such judgment and partition shall not affect tenants for years less than ten, to the whole of the property which is the subject of the partition.

SEC. 282. The expenses of the referees, including those of a surveyor and his assistant, when employed, shall be ascertained and allowed by the court; and the amount thereof, together with the fees allowed by law to the referees, shall be apportioned among the different parties to the action.

SEC. 283. When a lien is on an undivided interest or estate of any of the parties, such lien, if a partition be made, shall thenceforth be a charge only on the share assigned to such party; but such share shall be first charged

with its just proportion of the costs of the partition, in preference to such lien.

SEC. 284. When a part of the property only is ordered to be sold, if there be an estate for life or years in an undivided share of the whole property, such estate may be set off in any part of the property not ordered to be sold.

SEC. 285. The proceeds of the sale of the incumbered property shall be applied under the direction of the court as follows:

1st. To pay its just proportion of the general costs of the action;
2d. To pay the costs of the reference;
3d. To satisfy and cancel of record the several liens in their order of priority, by payment of the sums due and to become due; the amount due to be verified by affidavit at the time of payment.
4th. The residue among the owners of the property sold, according to their respective shares therein.

SEC. 286. Whenever any party to an action who holds a lien upon the property, or any part thereof, has other securities for the payment of the amount of such lien, the court may, in its discretion, order such securities to be exhausted before a distribution of the proceeds of sale, or may order a just deduction to be made from the amount of the lien on the property on account thereof.

SEC. 287. The proceeds of sale, and the securities taken by the referees, or any part thereof, shall be distributed by them to the persons entitled thereto, whenever the court so directs. But in case no direction be given, all such proceeds and securities shall be paid into court, or deposited therein, or as directed by the court.

SEC. 288. When the proceeds of sales of any shares or parcels belonging to persons who are parties to the action and who are known, are paid into court, the action may be continued as between such parties, for the determination of their respective claims thereto, which shall be ascertained and adjudged by the court. Further testimony may be taken in court, or by a referee, at the discretion of the court, and the court may, if necessary, require such parties to present the facts or law in controversy, by pleadings, as in an original action.

SEC. 289. All sales of real property, made by referees under this chapter, shall be made by public auction to the highest bidder, upon notice published in the manner required for the sale of real property on execution. The notice shall state the terms of sale, and if the property or any part of it is to be sold, subject to a prior estate, charge, or lien, that shall be stated in the notice.

SEC. 290. The court shall, in the order for sale, direct the terms of credit which may be allowed for the purchase money of any portion of the premises of which it may direct a sale on credit, and for that portion of which the purchase money is required, by the provisions hereinafter contained, to be invested for the benefit of unknown owners, infants, or parties out of the Territory.

SEC. 291. The referees may take separate mortgages and other securities

for the whole on convenient portions of the purchase money, of such parts of the property as are directed by the court to be sold on credit, in the name of the clerk of the court and his successors in office; and for the shares of any known owner of full age, in the name of such owner; and for the shares of an infant, in the name of the guardian of such infant.

SEC. 292. The person entitled to a tenancy for life or years, whose estate shall have been sold, shall be entitled to receive such sum as may be deemed a reasonable satisfaction for such estate, and which the person so entitled may consent to accept instead thereof, by an instrument in writing filed with the clerk of the court. Upon the filing of such consent, the clerk shall enter the same in the minutes of the court.

SEC. 293. If such consent be not given, filed, and entered, as provided in the last section, at or before a judgment of sale is rendered, the court shall ascertain and determine what proportion of the proceeds of the sale, after deducting expenses, will be a just and reasonable sum to be allowed on account of such estate; and shall order the same to be paid to such party, or deposited in court for him, as the case may require.

SEC. 294. If the persons entitled to such estate for life or years be unknown, the court shall provide for the protection of their rights in the same manner, as far as may be, as if they were known and had appeared.

SEC. 295. In all cases of sales when it appears that any person has a vested or contingent future right or estate in any of the property sold, the court shall ascertain and settle the proportional value of such contingent or vested right or estate, and shall direct such proportion of the proceeds of the sale to be invested, secured, or paid over, in such manner as to protect the rights and interests of the parties.

SEC. 296. In all cases of sales of property, the terms shall be made known at the time; and if the premises consist of distinct farms or lots, they shall be sold separately.

SEC. 297. Neither of the referees, nor any person for the benefit of either of them, shall be interested in any purchase; nor shall a guardian of an infant party be interested in the purchase of any real property being the subject of the action, except for the benefit of the infant. All sales contrary to the provisions of this section shall be void.

SEC. 298. After completing a sale of the property, or any part thereof ordered to be sold, the referees shall report the same to the court, with a description of the different parcels of land sold to each purchaser; the name of the purchaser; the price paid or secured; the terms and conditions of the sale; and the securities, if any, taken. The report shall be filed in the office of the clerk of the county where the property is situated.

SEC. 299. If the sale be confirmed by the court, an order shall be entered directing the referees to execute conveyances and take securities pursuant to such sale; which they are hereby authorized to do. Such order may also give directions to them respecting the disposition of the proceeds of the sale.

SEC. 300. When a party entitled to a share of the property, or an

incumbrancer entitled to have his lien paid out of the sale, becomes a purchaser, the referees may take his receipt for so much of the proceeds of the sale as belong to him.

SEC. 301. The conveyances shall be recorded in the county where the premises are situated, and shall be a bar against all persons interested in the property in any way, who shall have been named as parties in the action; and against all such parties and persons as were unknown, if the summons have been served by publication, and against all persons claiming for them, or either of them.

SEC. 302. When there are proceeds of a sale belonging to an unknown owner, or to a person without the territory, who has no legal representative within it, the same shall be invested in securities on interest, for the benefit of the persons entitled thereto.

SEC. 303. When the security of the proceeds of sale is taken, or when an investment of any such proceeds is made, it shall be done, except as herein otherwise provided, in the name of the clerk of the court where the papers are filed, and his successor in office, who shall hold the same for the use and benefit of the parties interested, subject to the order of the court.

SEC. 304. When security is taken by the referees on a sale, and the parties interested in such security, by an instrument in writing under their hands delivered to the referees, agree upon the shares and proportions to which they are respectively entitled; or when shares and proportions have been previously adjudged by the court, such securities shall be taken in the names of, and payable to, the parties respectively entitled thereto; and shall be delivered to such parties upon their receipt therefor. Such agreement and receipt shall be returned and filed with the clerk.

SEC. 305. The clerk in whose name a security is taken, or by whom an investment is made, and his successor in office, shall receive the interest and principal as it becomes due, and apply and invest the same as the court may direct; and shall file in his office all securities taken, and keep an account in a book provided and kept for that purpose, in the clerk's office, free for inspection by all persons, of investments and moneys received by him thereon, and the disposition thereof.

SEC. 306. When it appears that partition cannot be made equal between the parties according to their respective rights, without prejudice to the rights and interests of some of them, and a partition be ordered by judgment, the court may adjudge compensation to be made by one party to another on account of the inequality of partition. But such compensation shall not be required to be made to others, by owners unknown, nor by infants, unless, in case of an infant, it appear that he has personal property sufficient for that purpose, and that his interest will be promoted thereby.

SEC. 307. When the share of an infant is sold, the proceeds of the sale may be paid by the referee making the sale to his general guardian, or the special guardian appointed for him in the action, upon giving the security required by law, or directed by order of the court.

SEC. 308. The guardian who may be entitled to the custody and manage-

ment of the estate of an insane person, or other person adjudged incapable of conducting his own affairs, whose interest in real property shall have been sold, may receive, in behalf of such persons, his share of the proceeds of such real property from the referee, on executing with sufficient sureties, an undertaking approved by a judge of the court or judge of probate that he will faithfully discharge the trust reposed in him, and will render a true and just account to the person entitled, or to his legal representative.

SEC. 309. The general guardian of an infant and the guardian entitled to the custody and management of the estate of an insane person, or other person adjudged incapable of conducting his own affairs, who is interested in real estate held in joint tenancy, or in common, or in any other manner so as to authorize his being made a party to an action for the partition thereof, may consent to a partition without action and agree upon the share to be set off to such infant or other person entitled, and may execute a release in his behalf to the owners of the shares of the parts to which they may be respectively entitled, upon an order of the court.

SEC. 310. The costs of partition, including fees of referees and other disbursements, shall be paid by the parties respectively entitled to share in the lands divided, in proportion to their respective interests therein, and may be included and specified in the judgment. In that case they shall be a lien on the several shares, and the judgment may be enforced by execution against such shares, and against other property held by the respective parties. When, however, a litigation arises between some of the parties only the court may require the expenses of such litigation to be paid by the parties thereto, or any of them.

SEC. 311. The court, with the consent of the parties, may appoint a single referee instead of three referees, in the proceedings under the provisions of this chapter; and the single referee, when thus appointed, shall have all the powers and perform all the duties required of the three referees.

Actions for the Usurpation of an Office or Franchise.

SEC. 312. An action may be brought by the attorney-general in the name of the Territory upon his own information, or upon the complaint of a private party, against any person who usurps, intrudes into, or unlawfully holds or exercises any public office, civil or military, or any franchise within this Territory. And it shall be the duty of the attorney-general to bring the action, whenever he has reason to believe that any such office or franchise has been usurped, intruded into, or unlawfully held or exercised by any person, or when he is directed to do so by the governor: Provided, that any person claiming such office or franchise may bring such action, by applying for and obtaining leave of the court for that purpose.

SEC. 313. Whenever such action is brought, the attorney-general or other person, in addition to the statement of the cause of action, may also set forth in the complaint the name of the person rightly entitled to the office, with a statement of his right thereto; and in such case, upon proof by affidavit that the defendant has received fees or emoluments belonging to the office, and by means of his usurpation thereof, an order may be granted by a judge of the supreme court, or a district judge, for the arrest of such defendant, and holding him to bail; and thereupon he may be arrested,

and held to bail, in the same manner and with the same effect, and subject to the same rights and liabilities as in other civil actions where the defendant is subject to arrest.

SEC. 314. In every such case, judgment may be rendered upon the right of the defendant, and also upon the right of the party so alleged to be entitled; or only upon the right of the defendant, as justice shall require.

SEC. 315. If the judgment be rendered upon the right of the person so alleged to be entitled, and the same be in favor of such person, he shall be entitled, after taking the oath of office, and executing such official bond as may be required by law, to take upon himself the execution of the office.

SEC. 316. If judgment be rendered upon the right of the person so alleged to be entitled, in favor of such person, he may recover by action, the damages which he shall have sustained by reason of the usurpation of the office by the defendant.

SEC. 317. When several persons claim to be entitled to the same office or franchise, one action may be brought against all such persons, in order to try their respective rights to such office or franchise.

SEC. 318. When a defendant, against whom such action has been brought, is adjudged guilty of usurping or intruding into, or unlawfully holding any office, franchise, or privilege, judgment shall be rendered that such defendant be excluded from the office, franchise, or privilege, and that he pay the costs of the action. The court may also, in its discretion, impose upon the defendant a fine not exceeding five thousand dollars; which fine, when collected, shall be paid into the treasury of the Territory.

Of Actions against Steamers, Vessels, and Boats.

SEC. 319. All steamers, vessels, and boats shall be liable:—

1st. For supplies furnished for their use at the request of their respective owners, masters, agents, or consignees;

2d. For services rendered on board at the request of, or contract with, their respective owners, masters, agents, or consignees;

3d. For materials furnished in their construction, or repair, or equipment;

4th. For their wharfage and anchorage within the Territory;

5th. For non-performance or mal-performance of any contract for the transportation of persons or property made by their respective owners, masters, agents, or consignees;

6th. For injuries committed by them to persons or property; provided, that the wages of mariners, boatmen, and others employed in the service of such steamers, vessels, and boats, shall have preference over all other demands.

SEC. 320. Actions for demands arising upon any of the grounds specified in the preceding section, may be brought directly against such steamers, vessels, or boats.

SEC. 321. The complaint shall designate the steamer, vessel, or boat by name, and shall be verified by the oath of the plaintiff, or some one on his behalf.

SEC. 322. The summons attached to a copy of the complaint may be served on the master, mate, or any person having charge of the steamer, vessel, or boat, against which the action is brought.

SEC. 323. The plaintiff, at the time of issuing the summons, or at any time afterwards, may have the steamer, vessel, or boat, against which the action is brought, with its tackle, apparel, and furniture, attached, as security for the satisfaction of any judgment that may be recovered therein.

SEC. 324. The clerk of the court shall issue a writ of attachment, on the application of the plaintiff, upon receiving a written undertaking on behalf of the plaintiff, executed by two or more sufficient sureties, to the effect that if judgment be rendered in favor of the steamer, vessel, or boat, as the case may be, he will pay all costs and damages that may be awarded against him, and all damages which may be sustained by such steamer, vessel, or boat, from the attachment, not exceeding the sum specified in the undertaking, which shall in no case be less than five hundred dollars when the attachment is issued against a steamer or vessel, or less than two hundred dollars when issued against a boat. The undertaking shall be accompanied by an affidavit of each of the sureties, that he is a resident and freeholder or householder of the county, and worth double the amount specified in the undertaking over and above all his just debts and liabilities. The clerk shall file the undertaking and affidavits.

SEC. 325. The writ shall be directed to the sheriff of the county within which the steamer, vessel, or boat lies, and direct him to attach such steamer, vessel, or boat, with its tackle, apparel, and furniture, and keep the same in his custody until discharged by due course of law; unless the owner, master, agent, or consignee thereof, give him security by the undertaking of at least two sufficient sureties, in an amount sufficient to satisfy the demand in suit, which shall be specified in the writ, besides costs; in which case he release such steamer or other property and return such undertaking with his writ.

SEC. 326. The sheriff to whom the writ is directed and delivered shall execute the same without delay, and shall, unless the undertaking mentioned in the last section be given, attach and keep in his custody the steamer, vessel, or boat named therein, with its tackle, apparel, and furniture, until discharged by due course of law; but the sheriff shall not be authorized by any such writ to interfere with the discharge of any merchandise on board of such steamer, vessel, or boat, nor with the removal of any trunks or other property of passengers, or of the captain, mate, seamen, steward, cook, or other persons employed on board.

SEC. 327. The owner, master, agent, or consignee of the steamer, vessel, or boat, against which the action is brought, may appear and answer, or plead to the action; and may except to the sufficiency of the sureties on the undertaking filed on the behalf of the plaintiff, and may require sureties to justify, as in actions against individuals upon bail on arrest.

SEC. 328. All proceedings in actions under the provisions of this chapter shall be conducted in the same manner as in actions against individuals, except as otherwise herein provided; and in all proceedings subsequent to the complaint, the steamer, vessel, or boat, may be designated as defendant.

SEC. 329. After the appearance to the action of the owner, master, agent,

or consignee, the attachment may, on motion, be discharged, in the same manner, and on like terms and conditions as attachments in other cases, subject to the provisions of section three hundred and thirty-one.

SEC. 330. If the attachment be not discharged, and a judgment be recovered in the action in favor of the plaintiff, and an execution be issued thereon, the sheriff shall sell at public auction, after publication of notice of such sale for ten days, the steamer, vessel, or boat, with its tackle, apparel, and furniture, or such interest therein as may be necessary, and shall apply the proceeds of sale as follows:

1. When the action is brought for demands other than the wages of mariners, boatmen, and others employed in the service of the steamer, vessel, or boat sold, to the payment of the amount of such wages, as specified in the execution.

2. To the payment of the judgment and costs, including his fees; and,

3. He shall pay any balance remaining to the owner, master, agent, or consignee, who may have appeared in the action; or if there be no appearance, then into court, subject to the claim of any party or parties legally entitled thereto.

SEC. 331. Any mariner, boatman, or other person employed in the service of the steamer, vessel, or boat attached, who may wish to assert his claim for wages against the same, the attachments being issued for other demands than such wages, shall file an affidavit of his claim, setting forth the amount and the particular service rendered, with the clerk of the court; and thereafter no attachment shall be discharged upon filing an undertaking, unless the amount of such claim, or the amount determined as provided in the next section, be covered thereby in addition to the other requirements; and any execution issued against such steamer, vessel, or boat, upon judgment recovered thereafter, shall direct the application of the proceeds of any sale: first, to the payment of the amount of such claims filed, or the amount determined, as provided in the next section, which the clerk shall insert in the writ; and, second, to the payment of the judgment and costs, and sheriff's fees; and shall direct the payment of any balance to the owner, master, agent, or consignee, who may have appeared in the action; but if no appearance by them be made therein, it shall direct a deposit of the balance in court.

SEC. 332. If the claim of the mariner, boatman, or other person, filed with the clerk of the court, as provided in the last section, be not contested within five days after notice of the filing thereof by the owner, master, agent, or consignee of the steamer, vessel, or boat, against which the claim is filed, it shall be deemed admitted; but if contested, the clerk shall endorse upon the affidavit thereof a statement that it is contested, and the grounds of the contest; and shall immediately thereafter order the matter to a single referee for his determination, or he may hear the proofs and determine the matter himself. The judgment of the clerk or referee may be received by the judge either in term or vacation, immediately after the same is given, and the judgment of the judge shall be final. On the review the judge may use the minutes of the proofs taken by the clerk or referee, or may take the proofs anew.

SEC. 333. The notice of sale published by the sheriff shall contain a statement of the measurement and tonnage of the steamer, vessel, or boat, and a general description of her condition.

SEC. 334. From orders and judgments under this chapter, an appeal may be taken by the owner, master, agent, or consignee, on the same terms and conditions as appeals in actions against individuals.

Of Appeals in Civil Actions.

Appeals in General.

SEC. 335. A judgment or order in a civil action, except when made final by this chapter, may be reviewed as prescribed by this chapter, and not otherwise.

SEC. 336. An order made out of court, without notice to the adverse party, may be vacated or modified, without notice, by the judge who made it; or may be vacated or modified on notice, in the manner in which other motions are made.

SEC. 337. Any party aggrieved may appeal in the cases prescribed in this chapter. The party appealing shall be known as the appellant, and the adverse party as the respondent.

SEC. 338. An appeal may be taken:

1. From a final judgment in an action or special proceeding commenced in the court in which the judgment is rendered, within one year after the rendition of the judgment.
2. From a judgment rendered on an appeal from an inferior court, within ninety days after the rendition of the judgment.
3. From an order made by the probate court which, by law, may be appealed from, within sixty days after the order is made and entered by the clerk.

This section shall not extend to appeals to the district courts from orders or judgments of the probate courts, but shall extend to judgments rendered in the district courts upon such appeals.

SEC. 339. The appeal shall be made by filing with the clerk of the court with whom the judgment or order appealed from is entered, a notice stating the appeal from the same, or some specific part thereof, and serving a copy of the notice upon the adverse party or his attorney.

SEC. 340. When the party who has the right to appeal wishes a statement of the case to be annexed to the record of the judgment or order, he shall, within twenty days after the entry of such judgment or order, prepare such statement, which shall contain the grounds upon which he intends to rely on the appeal, and so much of the evidence as may be necessary to explain the grounds, and no more, and shall serve a copy thereof upon the adverse party. The respondent may, within five days thereafter, prepare amendments to the statement, and serve a copy on the appellant. If such amendments are admitted the statement shall be corrected accordingly; and if not admitted, the statement and amendment shall be presented to the judge who tried or heard the case, upon notice of two days to the respondent, and a true statement shall thereupon be settled by such judge.

SEC. 341. If the party shall omit to make a statement within the time

above limited, he shall be deemed to have waived his right thereto; and when a statement is made and the parties shall omit within the several times above limited, the one party to propose amendments, the other to notify an appearance before the judge, they shall respectively be deemed, the former to have agreed to the statement as proposed, and the latter to have agreed to the amendments as proposed.

SEC. 342. The several periods of time above limited may be enlarged, upon good cause shown by the judge before whom the cause was tried.

SEC. 343. The statement, when settled by the judge, shall be signed by him, with the certificate that the same has been allowed and is correct; when the statement is agreed upon by the parties, they or their attorneys shall sign the same, with their certificate that it has been agreed upon by them and is correct. In either case, when settled or agreed upon, it shall be filed with the clerk.

SEC. 344. The clerk shall annex the statement if the appeal be from a final judgment, to the judgment-roll; if the appeal be from an order, to such order or to a copy thereof.

SEC. 345. The provisions of the last five preceding sections shall not apply to appeals taken from an order made upon affidavits filed; but such affidavits shall be annexed to the order in the place of the statement mentioned in those sections.

SEC. 346. Upon an appeal from a judgment, the court may review any intermediate order involving the merits and necessarily affecting the judgment.

SEC. 347. Upon an appeal from a judgment or order, the appellate court may reverse, affirm, or modify the judgment or order appealed from, in the respect mentioned in the notice of appeal, and as to any or all of the parties; and may set aside or confirm, or modify, any or all of the proceedings subsequent to, or dependent upon such judgment or order; and may, if necessary or proper, order a new trial. When the judgment or order is reversed or modified, the appellate court may make complete restitution of all property and rights lost by the erroneous judgment or order; and when it appears to the appellate court that the appeal was made for delay, it may add to the costs such damages as may be just.

SEC. 348. On an appeal from a final judgment, the appellant shall furnish the court a copy of the notice of appeal, the judgment-roll, and the statement annexed, certified by the clerk to be a correct copy. On appeal from a judgment rendered on an appeal or order, the appellant shall furnish the court with a copy of the notice of appeal, the judgment or order appealed from, and a copy of the papers used on the hearing of the court below; such copies to be certified by the clerk to be correct. If any written opinion be given on rendering the judgment or making the order in the court below, a copy shall be furnished. If the appellant fail to furnish the requisite papers, the appeal may be dismissed; and whenever costs are awarded to a party by an appellate court, such party may have execution for the same on filing a *remittitur* with the clerk below, who shall thereupon issue the execution upon application therefor; and whenever costs are awarded to a party by an order of any court of record, such party may have execution therefor in like manner as upon a judgment.

Appeals to the Supreme Court from the District Court.

SEC. 349. An appeal may be taken to the supreme court from the district courts in the following cases:

1. From the final judgment rendered in an action or special proceeding commenced in those courts, or brought into those courts from another court;
2. From an order made granting or refusing a new trial, or which affects a substantial right in an action or special proceeding.

SEC. 350. To render an appeal effectual for any purpose in any case, a written undertaking shall be executed on the part of the appellant, by at least two sureties, to the effect that the appellant will pay all damages and costs which may be awarded against him on the appeal, not exceeding three hundred dollars; or that sum shall be deposited with the clerk with whom the judgment or order was entered, to abide the event of the appeal. Such undertaking shall be filed, or such deposit made with the clerk, within five days after the notice of appeal is filed.

SEC. 351. If the appeal be from a judgment or order directing the payment of money, it shall not stay the execution of the judgment or order unless a written undertaking be executed on the part of the appellant by two or more sureties, stating their places of residence and occupation, to the effect that they are bound in double the amount named in the judgment or order, that if the judgment or order appealed from, or any part thereof, be affirmed, the appellant shall pay the amount directed to be paid by the judgment or order, or the part of such amount as to which the judgment or order shall be affirmed, if affirmed only in part; and all damages and costs which shall be awarded against the appellant upon the appeal.

SEC. 352. If the judgment or order appealed from direct the assignment or delivery of documents, or personal property, the execution of the judgment or order shall not be stayed by appeal unless the things required to be assigned or delivered be placed in the custody of such officer or receiver as the court may appoint; or unless an undertaking be entered into on the part of the appellant, with at least two sureties, and in such amount as the court or the judge thereof may direct, to the effect that the appellant will obey the order of the appellate court upon the appeal.

SEC. 353. If the judgment or order appealed from direct the execution of a conveyance or other instrument, the execution of the judgment or order shall not be stayed by the appeal until the instrument is executed and deposited with the clerk, to abide the judgment of the appellate court.

SEC. 354. If the judgment or order appealed from direct the sale or delivery of possession of real property, the execution of the same shall not be stayed, unless a written undertaking be executed on the part of the appellant, with two or more sureties, to the effect that during the possession of such property by the appellant, he will not commit, or suffer to be committed, any waste thereon, and that if the judgment be affirmed, he will pay the value of the use and occupation of the property from the time of the appeal until the delivery of possession thereof, pursuant to the judgment or order, not exceeding a sum to be fixed by the judge of the court by which the judgment was rendered or order made, and which shall be specified in

the undertaking. When the judgment is for the sale of mortgaged premises, and the payment of a deficiency arising upon the sale, the undertaking shall also provide for the payment of such deficiency.

SEC. 355. Whenever an appeal is perfected, as provided by the preceding sections in this chapter, it shall stay all further proceedings in the court below upon the judgment or order appealed from, or upon the matter embraced therein; but the court below may proceed upon any other matter included in the action, and not affected by the judgment or order appealed from. And the court below may, in its discretion, dispense with, or limit the security required by said sections, when the appellant is an executor, administrator, trustee, or other person acting in another's right.

SEC. 356. The undertaking prescribed by sections three hundred and fifty-one, three hundred and fifty-two, three hundred and fifty-three, and three hundred and fifty-four, may be in one instrument or several, at the option of the appellant.

SEC. 357. An undertaking upon an appeal shall be of no effect unless it be accompanied by the affidavit of the sureties that they are each worth double the amount specified therein, over and above all their just debts and liabilities, exclusive of property exempt from execution. The adverse party may, however, except to the sufficiency of the sureties within five days after the filing of the undertaking; and unless they or other sureties justify before a judge of the court below, or the district clerk, within five days thereafter (upon notice to the adverse party), the appeal shall be regarded as if no such undertaking had been given.

SEC. 358. In cases not provided for in sections three hundred and fifty-one, three hundred and fifty-two, three hundred and fifty-three, and three hundred and fifty-four, the perfecting of an appeal by giving the undertaking, and the justification of the sureties thereon, if required, or making the deposit mentioned in section three hundred and fifty, shall stay proceedings in the court below upon the judgment or order appealed from; except that where it directs the sale of perishable property, the court below may order the property to be sold and the proceeds thereof to be deposited, to abide the judgment of the appellate court.

SEC. 359. Appeals in the supreme court from a final judgment, and from a judgment rendered on an appeal, shall be heard at a general term. Appeals in all other cases shall be heard at a special term.

SEC. 360. When judgment is rendered upon the appeal, it shall be certified by the clerk of the supreme court to the clerk with whom the judgment-roll is filed. In cases of appeal from the judgment, the clerk with whom the roll is filed shall attach the certificate to the judgment-roll, and enter a minute of the judgment of the supreme court on the docket against the original entry. In case of appeal from an order, the clerk shall enter at length in the records of the court the certificate received, and minute against the entry of the order appealed from a reference to the certificate, with a brief statement that such order has been affirmed, reversed, or modified, as the case may be, by the supreme court on appeal.

Appeals from Justices' Courts.

Appeals to the District Courts from Justices' Courts.

SEC. 361. In all appeals from justices' courts to the district court, after the returns are filed, the court shall proceed to examine such returns, and render judgment thereon, as the right of the case shall appear, without regard to technicalities or imperfections in pleadings, if they do not tend to the prejudice of the rights of any party.

SEC. 362. Such judgment may be rendered upon the returns, or the court may order the same to be tried anew in the district court, as substantial justice may require.

SEC. 363. Appeals to the district courts, as provided in this chapter, shall be heard at any terms of those courts, and shall be brought on to a hearing at the earliest period practicable.

SEC. 364. The appellant shall furnish the papers to the appellate court in the same manner as upon an appeal to the supreme court. Causes on appeal shall be tried anew in the appellate court, if the court so direct.

Appeals to the District Courts from the Probate Courts.

SEC. 365. An appeal may be taken from a probate court to the district court of the district in which the probate court is held, in the following cases:

1. From an order or decree admitting a will to probate, or refusing the same.
2. From an order setting apart property, or making an allowance for the widow or children.
3. From an order granting letters testamentary or of administration, or appointing a guardian of an infant, or of an insane person, or of a person incompetent to manage his property, or refusing to grant such letters or to make such appointment, or making such letters or appointment.
4. From an order directing the sale or conveyance of real property.
5. From an order or decree by which a debt, claim, legacy, or distributive share is allowed, or payment thereof directed; or by which such allowance or direction is refused.
6. From an order made on the settlement of an executor, administrator, or guardian.

SEC. 366. The appeal shall be taken within thirty days after the order or decree appealed from is entered with the clerk.

SEC. 367. Appeals from the probate courts shall be heard at any terms of the district courts, and be brought on at the earliest period practicable.

SEC. 368. For a failure to prosecute an appeal from the probate court, or an unnecessary delay in bringing it to a hearing, the district court may order the appeal to be dismissed.

SEC. 369. If the appeal be dismissed as provided in the preceding sec-

tion, the clerk shall file a certified copy of the order dismissing the same in the probate court, and thereupon such court may proceed in the case as if no appeal had been taken.

Miscellaneous Proceedings.

Proceedings against Joint Debtors.

SEC. 370. When a judgment is recovered against any one or more of several persons jointly indebted upon an obligation, by proceedings, as provided in section thirty-two, those who were not originally served with the summons, and did not appear to the action, may be summoned to show cause why they should not be bound by the judgment, in the same manner as though they had been originally served with the summons.

SEC. 371. The summons, as provided in the last section, shall describe the judgment, and require the person summoned to show cause why he should not be bound by it, and shall be served in the same manner, and returnable within the same time, as the original summons. It shall not be necessary to file a new complaint.

SEC. 372. The summons should be accompanied by an affidavit of the plaintiff, his agent, representative, or attorney, that the judgment or some part thereof remains unsatisfied; and shall specify the amount due thereon.

SEC. 373. Upon such summons the defendant may answer within the time specified therein, denying the judgment, or setting up any defence which may have arisen subsequently; or he may deny his liability on the obligation upon which the judgment was recovered, except a discharge from such liability by the statute of limitation.

SEC. 374. If the defendant in his answer deny the judgment, or set up any defence which may have arisen subsequently, the summons, with the affidavit annexed, and the answer, shall constitute the written allegations in the case; if he deny his liability on the obligation upon which the judgment was recovered, a copy of the original complaint and judgment, the summons, with the affidavit annexed, and the answer, shall constitute such written allegations.

SEC. 375. The issues formed may be tried as in other cases; but when the defendant denies in his answer any liability on the obligation upon which the judgment was rendered, if a verdict be found against him, it shall be for the amount remaining unsatisfied on such original judgment, with interest thereon.

Confession of Judgment without Action.

SEC. 376. A judgment by confession may be entered without action, either for money due or to become due, or to secure any person against contingent liability on behalf of the defendant, or both, in the manner prescribed in this chapter.

SEC. 377. A statement in writing shall be made, signed by the defendant, and verified by his oath, to the following effect:

1st. It shall authorize the entry of judgment for a specified sum.

2d. If it be for money due or to become due, and shall state concisely the facts out of which it arose, and shall show that the sum confessed therefor is justly due or to become due.

3d. If it be for the purpose of securing the plaintiff against a contingent liability, it shall state concisely the facts constituting the liability, and shall show that the sum confessed therefor does not exceed the same.

SEC. 378. The statement shall be filed with the clerk of the court in which the judgment is to be entered, who shall endorse upon it, and enter in the judgment book a judgment of such court for the amount confessed, with ten dollars costs. The statement and affidavit, with the judgment endorsed, shall thereupon become the judgment-roll.

Submitting a Controversy without Action.

SEC. 379. Parties to a question in difference which might be the subject of a civil action, may, without action, agree upon a case containing the facts upon which the controversy depends, and present a submission of the same to any court which should have jurisdiction if an action had been brought. But it must appear by affidavit that the controversy is real, and the proceedings in good faith, to determine the rights of the parties. The court shall thereupon hear and determine the case, and render judgment thereon as if an action were depending.

SEC. 380. Judgment shall be entered in the judgment book as in other cases, but without costs, for any proceedings prior to the trial. The case, the submission, and a copy of the judgment shall constitute the judgment-roll.

SEC. 381. The judgment may be enforced in the same manner as if it had been rendered in an action, and shall be in the same manner subject to appeal.

Of Arbitrations.

SEC. 382. Persons capable of contracting may submit to arbitration any controversy which might be the subject of a civil action between them, except a question of title to real property in fee or for life. This qualification shall not include questions relating merely to the partition or boundaries of real property.

SEC. 383. The submission to arbitration shall be in writing, and may be to one or more persons.

SEC. 384. It may be stipulated in the submission that it be entered as an order of the district court, for which purpose it shall be filed with the clerk of the county where the parties, or one of them, reside. The clerk shall thereupon enter in his register of actions a note of the submission, with the names of the parties, the names of the arbitrators, the date of the submission, when filed, and the time limited by the submission, if any, within which the award shall be made. When so entered, the submission shall not be revoked without the consent of both parties. The arbitrators may be compelled by the court to make an award, and the award may be enforced

by the court in the same manner as a judgment. If the submission be not made an order of the court, it may be revoked at any time before the award is made.

SEC. 385. Arbitrators shall have power to appoint a time and place for hearing, to adjourn from time to time, to administer oaths to witnesses, to hear the allegations and evidence of the parties, and to make an award thereon.

SEC. 386. All the arbitrators shall meet and act together during the investigation; but when met, a majority may determine any question. Before acting they shall be sworn before an officer authorized to administer oaths, faithfully and fairly to hear and examine the allegations and evidence of the parties in relation to the matters in controversy, and to make a just award according to their understanding.

SEC. 387. The award shall be in writing, signed by the arbitrators, or a majority of them, and delivered to the parties. When the submission is made an order of the court, the award shall be filed with the clerk, and a note thereof made in his register. After the expiration of five days from the filing of the award, upon the application of a party, and on filing an affidavit showing that notice of filing the award has been served on the adverse party or his attorney at least four days prior to such application, and that no order staying the entry of judgment has been served, the award shall be entered by the clerk in the judgment book, and shall thereupon have the effect of a judgment.

SEC. 388. The court, on motion, may vacate the award upon either of the following grounds, and may order a new hearing before the same arbitrators, or not, in its discretion:

1. That it was procured by corruption or fraud.
2. That the arbitrators were guilty of misconduct or committed gross error in refusing, on cause shown, to postpone the hearing, or in refusing to hear pertinent evidence, or otherwise acted improperly, in a manner by which the rights of the party were prejudiced.
3. That the arbitrators exceeded their powers in making their award, or that they refused, or improperly omitted, to consider a part of the matters submitted to them; or that the award is indefinite, or cannot be performed.

SEC. 389. The court may, on motion, modify or correct the award, where it appears:

1. That there was a miscalculation in figures upon which it was made, or that there is a mistake in the description of some person or property therein.
2. When a part of the award is upon matters not submitted, which part can be separated from other parts, and does not affect the decision on the matter submitted.
3. When the award, though imperfect in form, could have been amended if it had been a verdict, or the imperfection disregarded.

SEC. 390. The decisions upon the motion shall be subject to appeal in the same manner as an order which is subject to appeal in a civil action; but the judgment entered before a motion is made shall not be subject to appeal.

SEC. 391. If a submission to arbitration be revoked, and an action be brought therefor, the amount to be recovered shall only be the costs and damages sustained in preparing for and attending the arbitration.

Offer of the Defendant to Compromise the whole or a Part of an Action.

SEC. 392. The defendant may, at any time before the trial or judgment, serve upon the plaintiff an offer to allow judgment to be taken against him for the sum or property, or to the effect therein specified. If the plaintiff accept the offer and give notice thereof within five days, he may file the summons, complaint, and offer, with an affidavit of notice of acceptance, and the clerk shall thereupon enter judgment accordingly. If the notice of acceptance be not given, the offer shall be deemed withdrawn, and shall not be given in evidence; and if the plaintiff fail to obtain a more favorable judgment, he shall not recover costs, but shall pay the defendant's costs from the time of the offer.

Of Witnesses, and of the manner of obtaining Evidence of Witnesses.

SEC. 393. All persons, without exception, otherwise than as specified in this chapter, may be witnesses in any action or proceeding.

SEC. 394. No person offered as a witness shall be excluded by reason of his interest in the event of the action or proceeding; nor on account of opinions on matters of religious belief.

SEC. 395. The examination of the parties to any action, or persons for whose immediate benefit the action is prosecuted or defended, shall be taken as provided in sections four hundred and twenty and four hundred and twenty-four of this chapter.

SEC. 396. The following persons shall not be witnesses:

1. Those who are of unsound mind at the time of their production for examination.
2. Children under ten years of age, who appear incapable of receiving just impressions of the facts respecting which they are examined, or of relating them truly; and,
3. Indians or persons having one-half or more of Indian blood, in an action or proceeding to which a white person is a party.
4. Negroes, or persons having one-half or more negro blood, in an action or proceeding to which a white person is a party.

SEC. 397. A husband shall not be a witness for or against his wife, nor a wife a witness for or against her husband; nor can either, during the marriage, or afterwards, be, without the consent of the other, examined as to any communication made by one to the other during the marriage. But this exception shall not apply to an action or proceeding by one against the other.

SEC. 398. An attorney or counsellor shall not, without the consent of his client, be examined as a witness as to any communication made by the

client to him, or his advice given thereon, in the course of professional employment.

SEC. 399. A clergyman or priest shall not, without the consent of the person making the confession, be examined as a witness as to any confession made to him in his professional character, in the course of discipline enjoined by the church to which he belongs.

SEC. 400. A licensed physician or surgeon shall not, without the consent of his patient, be examined as a witness as to any information acquired in attending the patient which was necessary to enable him to prescribe or act for the patient.

SEC. 401. A public officer shall not be examined as a witness as to communications made to him in official confidence, when the public interest would suffer by the disclosure.

SEC. 402. The judge himself, or any juror, may be called as a witness by either party; but in such case it shall be in the discretion of the court or judge to order the trial to be postponed or suspended, and to take place before another judge or jury.

SEC. 403. When a witness does not understand and speak the English language, an interpreter shall be sworn to interpret for him.

Manner of compelling the Attendance of Witnesses, and their Rights and Duties.

SEC. 404. A subpœna may require not only the personal attendance of the person to whom it is directed at a particular time and place, to testify as a witness, but may also require him to bring with him any books, documents, or other things under his control. No witness shall be required to attend before any court, judge, justice, or other officer, out of the county in which he resides.

SEC. 405. The subpœna shall be issued as follows:—

1. To require attendance before a court, or at the trial of an issue therein, it shall be issued in the name and under the seal of the court before which the attendance is required, or in which the issue is pending;
2. To require attendance out of court before a judge, justice, or other officer authorized to administer oaths or take testimony in any matter, under the laws of this Territory, it shall be issued by the judge, justice, or other officer before whom the attendance is required;
3. To require attendance before a commissioner appointed to take testimony by a court of any other State or country, it may be issued by any judge or justice of the peace, in places within their respective jurisdictions.

SEC. 406. The service of a subpœna shall be made by showing the original, and delivering a copy, or a ticket containing its substance, to the witness personally, giving or offering to him at the same time, if demanded by him, the fees to which he is entitled for travel to and from the place designated, and one day's attendance there. Such service may be made by any person.

SEC. 407. If a witness be concealed in a building or vessel, so as to prevent the service of a subpœna upon him, any court or judge, or any officer issuing the subpœna, may, upon proof by affidavit of the concealment and of the materiality of the witness, make an order that the sheriff of the county serve the subpœna; and the sheriff shall serve it accordingly, and for that purpose may break into the building or vessel where the witness is concealed.

SEC. 408. A person present in court, or before a judicial officer, may be required to testify in the same manner as if he were in attendance upon a subpœna issued by such court or officer.

SEC. 409. It shall be the duty of a witness duly served with a subpœna, to attend at the time appointed, with any papers under his control required by the subpœna, to answer all pertinent and legal questions, and, unless sooner discharged, to remain till the testimony is closed.

SEC. 410. A witness shall answer questions legal and pertinent to the matter in issue, though his answer may establish a claim against himself; but he need not give an answer which will have a tendency to subject him to punishment for a felony, nor need give an answer which will have a direct tendency to degrade his character, unless it be to the very fact in issue or to a fact from which the fact at issue would be presumed. But a witness shall answer as to the fact of his previous conviction for felony.

SEC. 411. Disobedience to a subpœna, or a refusal to be sworn, or to answer as a witness, or to subscribe an affidavit or deposition when required, may be punished as a contempt by the court or officer issuing the subpœna or requiring the witness to be sworn; and if the witness be a party, his complaint may be dismissed or his answer stricken out.

SEC. 412. A witness disobeying a subpœna shall also forfeit to the party aggrieved the sum of one hundred dollars and all damages which he may sustain by the failure of the witness to attend, which forfeiture and damages may be recovered in a civil action.

SEC. 413. In case of failure of a witness to attend, the court or officer issuing the subpœna, upon proof of the service thereof and of the failure of the witness, may issue a warrant to the sheriff of the county to arrest the witness and bring him before the court or officer where his attendance was required.

SEC. 414. If the witness be a prisoner confined in a jail or prison within this Territory for any other cause than a sentence for felony, an order for his examination in the prison upon deposition or for his temporary removal and production before a court or officer for the purpose of being orally examined, may be made as follows:

1. By the court itself in which the action or special proceeding is pending.
2. By a judge of the supreme court or district court where the action or proceeding is pending, if before a judge or other person out of court.

SEC. 415. Such order can only be made upon affidavit showing the nature of the action or proceeding, the testimony expected from the witness, and its materiality.

SEC. 416. If the witness be imprisoned in the county where the action or proceeding is pending, and for a cause other than a sentence for felony, his production may be required. In all other cases his examination, when allowed, shall be taken upon deposition.

SEC. 417. Every person who has been in good faith served with a subpœna to attend as a witness before a court, judge, commissioner, referee, or other person, in a case where the disobedience of the witness may be punished as a contempt, shall be exonerated from arrest in a civil action while going to the place of attendance, necessarily remaining there, and returning therefrom.

SEC. 418. The arrest of a witness contrary to the last section shall be void, but an officer shall not be liable to the party for making the arrest in ignorance of the facts creating the exoneration, but shall be liable for any subsequent detention of the party, if such party claim the exemption and make an affidavit stating:

1. That he has been served with a subpœna to attend as a witness before a court, officer, or other person, specifying the same, the place of attendance, and the action or proceeding in which the subpœna was issued; and
2. That he has not been thus served by his own procurement, with the intention of avoiding an arrest.
3. That he is, at the time, going to the place of attendance or returning therefrom, or remaining there in obedience to the subpœna. The affidavit may be taken by the officer, and shall exonerate him from liability for discharging the witness when arrested.

Of the Examination of Parties to an Action or Proceeding, and of Persons for whose immediate Benefit such Action or Proceeding is Prosecuted or Defended.

SEC. 419. No action to obtain a discovery, under oath, in aid of the prosecution or defence of another action or proceeding shall be allowed; nor shall any examination of a party be had on behalf of the adverse party, except in the manner prescribed by this chapter.

SEC. 420. A party to an action or proceeding may be examined as a witness at his own instance or at the instance of the adverse party, or of any one of several adverse parties; and, for that purpose, may be compelled in the same manner and subject to the same rules of examination as any other witness, to testify at the trial, and he may be examined on a commission.

SEC. 421. The examination of a party thus taken may be rebutted by adverse testimony.

SEC. 422. If a party refuse to attend and testify at the trial, or to give his deposition before trial, or upon a commission, when required—his complaint, answer, or reply may be stricken out and judgment be taken against him; and he may also, in the discretion of the court, be proceeded against as in other cases for a contempt.

SEC. 423. A party examined by an adverse party, as in this chapter provided, may be examined on his own behalf in respect to any matter perti-

nent to the issue. But, if he testify to any new matter not responsive to the inquiries put to him by the adverse party, or necessary to explain or qualify his answer thereto, or to discharge, when his answer would charge himself, such adverse party may offer himself as a witness on his own behalf in respect to such new matter, and shall be so received.

SEC. 424. A person for whose immediate benefit the action is prosecuted or defended, though not a party to the action, may be examined as a witness in the same manner, and subject to the same rules of examination as other witnesses.

SEC. 425. A party may be examined on the part of his co-plaintiff or a co defendant.

Of Affidavits.

SEC. 426. An affidavit to be used before any court, judge, board, or officer of this Territory, may be taken before any judge or clerk of any court, or any justice of the peace or notary public in this Territory.

SEC. 427. An affidavit taken in another State of the United States, to be used in this Territory, shall be taken before a commissioner appointed by the governor of this Territory to take affidavits and depositions in such other State, or before any judge of a court of record having a seal.

SEC. 428. An affidavit taken in a foreign country to be used in this Territory, shall be taken before an ambassador, minister, or consul of the United States; or before any judge of a court of record having a seal in such foreign country.

SEC. 429. When an affidavit is taken before a judge of a court in another State, or in a foreign country—the genuineness of the signature of the judge, the existence of the court, and the fact that such judge is a member thereof, shall be certified by the clerk of the court under the seal thereof.

Of Depositions taken in this Territory.

SEC. 430. The testimony of a witness in this Territory may be taken by deposition in an action at any time after the service of the summons or the appearance of the defendant; and in a special proceeding after a question of fact has arisen therein, in the following cases:

1st. When the witness is a party to the action or proceeding, or a person for whose immediate benefit the action or proceeding is prosecuted or defended;

2d. When the witness resides out of the county in which his testimony is to be used, or more than fifty miles from the place of trial;

3d. When the witness is about to leave the county where the action is to be tried, and will probably continue absent when the testimony is required.

4th. When the witness, otherwise liable to attend the trial, is nevertheless too infirm to attend.

SEC. 431. Either party may have the deposition taken of a witness in this Territory, before any judge or clerk, or any justice of the peace, or notary public in this Territory, on serving upon the adverse party previous notice of the time and place of examination, together with a copy of an affidavit showing that the case is one mentioned in the last section. Such notice shall be at least five days, and in addition one day for every twenty-five miles of the distance to the place of examination from the residence of the person to whom the notice is given, unless for a cause shown a judge, by order, prescribe a shorter time. When a shorter time is prescribed, a copy of that order shall be served with the notice.

SEC. 432. Either party may attend such examination and put such questions, direct and cross, as may be proper. The deposition, when completed, shall be carefully read to the witness and corrected by him in any particular, if desired; it shall then be subscribed by the witness, certified by the judge or officer taking the deposition, enclosed in an envelope or wrapper, sealed, and directed to the clerk of the court in which the action is pending, or to such person as the parties in writing may agree upon, and either delivered by the judge or officer to the clerk or such person, or transmitted through the mail, or by some safe private opportunity; and thereupon such deposition may be used by either party upon the trial or other proceeding, against any party giving or receiving the notice, subject to all legal exceptions. But if the parties attend at the examination, no objection to the form of an interrogatory shall be made at the trial, unless the same was stated at the time of the examination. If the deposition be taken by reason of the absence or intended absence from the county of the witness, or because he is too infirm to attend, proof by affidavit or oral testimony shall be made at the trial that the witness continues absent or infirm, to the best of the deponent's knowledge or belief. The deposition thus taken may be also read in case of the death of the witness.

SEC. 433. When a deposition has been once taken it may be read in any stage of the same action or proceeding by either party, and shall then be deemed the evidence of the party reading it.

Of Depositions taken out of this Territory.

SEC. 434. The testimony of a witness out of the Territory may be taken by deposition in an action at any time after the service of the summons or the appearance of the defendant; and in a special proceeding, at any time after a question of fact has arisen therein.

SEC. 435. The deposition of a witness out of this Territory shall be taken upon commission issued from the court, under the seal of the court, upon an order from the judge or court, on the application of either party, upon five days' previous notice to the other. It shall be issued to a person agreed upon by the parties, or if they do not agree, to any judge or justice of the peace selected by the officer granting the commission, or to a commissioner appointed by the governor of this Territory to take affidavits and depositions in other States.

SEC. 436. Such proper interrogatories, direct and cross, as the respective parties may prepare, to be settled if the parties disagree as to their form by the judge or officer granting the order for the commission, at a day

fixed in the order, may be annexed to the commission; or when the parties agree to that mode, the examination may be without written interrogatories.

SEC. 437. The commission shall authorize the commissioner to administer an oath to the witness, and to take his deposition in answer to the interrogatories, or when the examination is to be without interrogatories in respect to the question in dispute; and to certify the deposition to the court in a sealed envelope directed to the clerk or other person designated or agreed upon, and forwarded to him by mail or other usual channel of conveyance.

SEC. 438. A trial or other proceeding shall not be postponed by reason of a commission not returned, except upon evidence satisfactory to the court that the testimony of the witness is necessary, and that proper diligence has been used to obtain it.

Of Proceedings to Perpetuate Testimony.

SEC. 439. The testimony of a witness may be taken and perpetuated, as provided in this chapter.

SEC. 440. The applicant shall produce to a district judge, or to a judge of probate, an affidavit stating:

1. That the applicant expects to be a party to an action in a court of this Territory;
2. That the testimony of a witness residing in this Territory, whose place of residence is stated, is necessary to the prosecution or defence of such action; and generally the facts expected to be proved;
3. The judge may thereupon, in his discretion, make an order allowing the examination, and prescribing how long before the examination the order and notice of the time and place thereof shall be served.

SEC. 441. Upon proof of personal service upon the person who is expected to be the adverse party, of the order, copy of the affidavit, and of a notice that the examination will be taken before a district judge or notary public of the county wherein the witness resides, or may be at a specified time and place; such judge or notary may take the deposition of the witness, and the examination may, if necessary, be adjourned from time to time.

SEC. 442. The examination shall be by question and answer, unless the parties otherwise agree. The deposition, when completed, shall be carefully read to and subscribed by the witness, then certified by the judge, and immediately thereafter filed and recorded in the office of the clerk of the county where it was taken; together with the order for the examination of the witness, the affidavit on which the same was granted, and the affidavit of service of the affidavit, order, or notice.

SEC. 443. The affidavits filed with the deposition, or a certified copy thereof, shall be primary evidence of the facts stated therein, to show compliance with the provisions of this chapter.

SEC. 444. If a trial be had between the persons named in the affidavit as parties expectant, or their successors in interest, upon proof of the death or insanity of the witness, or of his inability to attend the trial by reason

of age, sickness, or settled infirmity, the deposition, or a certified copy thereof, may be used by either party, subject to all legal objections. But if the parties attend at the examination, no objection to the form of an interrogatory shall be made at the trial, unless the same was stated at the time of the examination.

Administration of Oaths and Affirmations.

SEC. 445. Every court of this Territory, every judge or clerk of any court, every justice of the peace, and every notary public, and every officer authorized to take testimony or to decide upon evidence in any proceeding, shall have power to administer oaths or affirmations.

SEC. 446. When a person is sworn who believes in any other than the Christian religion, he may be sworn according to the peculiar ceremonies of his religion, if there be any such.

SEC. 447. Any witness who desires it may, at his option, instead of taking an oath, make his solemn affirmation or declaration, by assenting when addressed, in the following form: "You do solemnly affirm, that the evidence you shall give in this issue (or matter), pending between and , shall be the truth, the whole truth, and nothing but the truth." Assent to this affirmation shall be made by the answer: "I do." A false affirmation or declaration shall be deemed perjury equally with a false oath.

Inspection of Documents, and Miscellaneous Provisions as to Records and Writings.

SEC. 448. Any court in which an action is pending, or a judge thereof, may, upon notice, order either party to give to the other within a specified time an inspection and copy, or permission to take a copy of any book, document, or paper in his possession or under his control, containing evidence relating to the merits of the action, or the defence therein. If compliance with the order be refused, the court may exclude the book, document, or paper from being given in evidence; or if wanted as evidence by the party applying, may direct the jury to presume it to be such as he alleges it to be; and the court may also punish the party refusing for a contempt. This section shall not be construed to prevent a party from compelling another to produce books, papers, or documents, when he is examined as a witness.

449. There shall be no evidence of the contents of a writing other than the writing itself, except in the following cases:

1. When the original has been lost or destroyed; in which case proof of the loss or destruction shall first be made.
2. When the original is in the possession of the party against whom the evidence is offered, and he fails to produce it after reasonable notice.
3. When the original is a record or other document, in custody of a public office.
4. When the original has been recorded, and a certified copy of the record is made evidence by statute.
5. When the original consists of numerous accounts or other documents,

which cannot be examined in court without great loss of time, and the evidence sought from them is only the general result of the whole.

SEC. 450. The party producing a writing as genuine, which has been altered, or appears to have been altered, after its execution, in a part material to the question in dispute, and such alteration is not noted on the writing, shall account for the appearance or alteration. He may show that the alteration was made by another, without his concurrence, or was made with the consent of the parties affected by it, or otherwise properly or innocently made. If he do that, he may give the writing in evidence, but not otherwise.

SEC. 451. A judicial record of this Territory or of the United States, may be proved by the production of the original, or a copy thereof, certified by the clerk or other person having the legal custody thereof, under the seal of the court, to be a true copy of such record; and copies of all papers, entries, documents, and records required by law to be filed by any public officer of this Territory or of the United States, in his office, or to be entered or recorded therein, and duly filed, entered, or recorded according to law, certified by such officer to be a true transcript compared by him with the original in his office, shall be evidence in all courts and proceedings, in like manner as the original would be if produced.

SEC. 452. A judicial record of any State or Territory may be proved by the production of a copy thereof, certified by the clerk or legal keeper of the record, under the seal of the court, to be a true copy of such record, together with the certificate of a judge of the court, that the person making the certificate is the clerk of the court, or legal keeper of the record, and in either case that the signature is genuine, and the certificate in due form.

SEC. 453. A judicial record of a foreign country may be proved by the production of a copy thereof, certified by the clerk, with the seal of the court annexed, if there be a clerk and seal; or by the legal keeper of the record with the seal of his office annexed, if there be a seal, to be a true copy of such record; together with a certificate of a judge of the court, that the person making the certificate is the clerk of the court, or the legal keeper of the record, and in either case, that the signature is genuine, and the certificate in due form; and also, together with the certificate of the minister or ambassador of the United States, or of a consul of the United States in such foreign country, that there is such a court, specifying generally the nature of its jurisdiction, and verifying the signature of the judge and clerk, or other legal keeper of the record.

SEC. 454. A copy of the judicial record of a foreign country shall also be admissible in evidence upon proof:

1. That the copy offered has been compared by the witness with the original, and is an exact transcript of the whole of it.
2. That such original was in the custody of the clerk of the court, or other legal keeper of the same—and,
3. That the copy is duly attested by a seal, which is proved to be the seal of the court where the record remains, if it be the record of a court; or if there be no such seal, or if it be not a record of a court, by the signature of the legal keeper of the original.

SEC. 455. Printed copies in volumes of statutes, code, or other written

law, enacted by any other State or Territory, or foreign government, purporting or proved to have been published by the authority thereof, or proved to be commonly admitted as evidence of the existing law in the courts and judicial tribunals of such State, Territory, or government, shall be admitted by the courts and officers of this Territory, on all occasions, as presumptive evidence of such law.

SEC. 456. A seal of a court or public office, when required to any writ or process, or proceeding, or to authenticate a copy of any record or document, may be impressed with wax, wafer, or any other substance, and then attached to the writ, process, or proceeding, or to the copy of the record or document, or it may be impressed on the paper alone.

Of the Writ of Certiorari, and of Mandamus.

Of the Writ of Certiorari, or Review.

SEC. 457. The writ of *certiorari* may be denominated the writ of review.

SEC. 458. This writ may be granted on application by the supreme and district courts of this Territory; the writ shall be granted in all cases when an inferior tribunal, board, or officer, exercising judicial functions, has exceeded the jurisdiction of such tribunal, board, or officer; and there is no appeal, nor, in the judgment of the court, any plain, speedy, and adequate remedy.

SEC. 459. The application shall be made on affidavit by the party beneficially interested, and the court may require a notice of the application to be given to the adverse party, or may grant an order to show cause why it should not be allowed, or may grant the writ without notice.

SEC. 460. The writ may be directed to the inferior tribunal, board, or officer, or to any other person having the custody of the record or proceedings to be certified. When directed to a tribunal, the clerk, if there be one, shall return the writ with the transcript required.

SEC. 461. The writ of review shall command the party to whom it is directed to certify fully to the court issuing the writ, at a specified time and place, and annex to the writ a transcript of the record and proceedings (describing or referring to them, with convenient certainty), that the same may be reviewed by the court; and requiring the party in the meantime to desist from further proceedings in the matter to be reviewed.

SEC. 462. If a stay of proceedings be not intended, the words requiring the stay shall be omitted from the writ; these words may be inserted or omitted in the sound discretion of the court; but if omitted, the power of the inferior court or officer shall not be suspended, nor the proceedings stayed.

SEC. 463. The writ shall be served in the same manner as a summons in civil action, except when otherwise expressly directed by the court.

SEC. 464. The review upon this writ shall not be extended further than to determine whether the inferior tribunal, board, or officer, has regularly pursued the authority of such tribunal, board, or officer.

SEC. 465. If the return to the writ be defective, the court may order a further return to be made. When a full return has been made, the court shall proceed to hear the parties, or such of them as may attend for that purpose, and may thereupon give judgment, either affirming or annulling, or modifying the proceedings below.

SEC. 466. A copy of the judgment, signed by the clerk, shall be transmitted to the inferior tribunal, board, or officer having the custody of the record or proceeding certified up.

SEC. 467. A copy of the judgment, signed by the clerk, entered upon, or attached to, the writ and return, shall constitute the judgment-roll. If the proceeding be had in any other than the supreme court, an appeal may be taken from the judgment in the same manner, and upon the same terms, as from a judgment in a civil action.

The Writ of Mandate, or Mandamus.

SEC. 468. The writ of *mandamus* may be denominated the writ of mandate.

SEC. 469. It may be issued by the supreme or district court to any inferior tribunal, corporation, board, or person, to compel the performance of an act which the law specially enjoins as a duty resulting from an office, trust, or station; or to compel the admission of a party to the use and enjoyment of a right or office to which he is entitled, and from which he is unlawfully precluded by such inferior tribunal, corporation, board, or person.

SEC. 470. This writ shall be issued in all cases where there is not a plain, speedy, and adequate remedy in the ordinary course of law. It shall be issued upon affidavit, on the application of the party beneficially interested.

SEC. 471. The writ shall be either alternative or peremptory; the alternative writ shall state generally the allegation against the party to whom it is directed, and command such party, immediately after the receipt of the writ, or at some other specified time, to do the act required to be performed, or to show cause before the court, at a specified time and place, why he has not done so. The peremptory writ shall be in a similar form, except that the words requiring the party to show cause why he has not done as commanded shall be omitted, and a return day shall be inserted.

SEC. 472. When the application to the court is made without notice to the adverse party, and the writ be allowed, the alternative shall be first issued; but if the application be upon due notice, and the writ be allowed, the peremptory may be issued in the first instance. The notice of the application, when given, shall be at least ten days. The writ shall not be granted by default. The case shall be heard by the court, whether the adverse party appear or not.

SEC. 473. On the return day of the alternative, or the day on which the application of the writ is noticed, or such further day as the court may allow, the party on whom the writ or notice shall have been served may

show cause by answer under oath, made in the same manner as an answer to a complaint in a civil action.

SEC. 474. If an answer be made which raises a question as to a matter of fact essential to the determination of the motion, and affecting the substantial rights of the parties, and upon the supposed truth of the allegation of which the application for the writ is based, the court may, in its discretion, order the question to be tried before a jury, and postpone the argument until such trial can be had, and the verdict certified to the court. The question to be tried shall be distinctly stated in the order for trial, and the county shall be designated in which the same shall be had. The order may also direct the jury to assess any damages which the applicant may have sustained in case they find for him.

SEC. 475. On the trial the applicant shall not be precluded by the answer of any valid objection to its sufficiency, and may countervail it by proof either in direct denial or by way of avoidance.

SEC. 476. If either party be dissatisfied with the verdict of the jury, he may move for a new trial upon a statement prepared as provided in section 195. The motion for a new trial may, upon reasonable notice, be brought on before the judge of the court in which the cause was tried, either in term or vacation. If a new trial be granted, the jury shall, within five days thereafter, unless the parties agree on a longer time, be summoned to try the issue. After a second verdict in favor of the same party, a new trial shall not be had.

SEC. 477. If no notice for a new trial be given, or if given, be denied, the clerk, within five days after the rendition of the verdict or denial of the motion, shall transmit to the court in which the application for the writ is pending, a certified copy of the verdict attached to the order of trial; after which either party may bring on the argument of the application, upon reasonable notice to the adverse party.

SEC. 478. If no answer be made, the case shall be heard on the papers of the applicant. If an answer be made which does not raise a question such as is mentioned in section 474, but only such matters as may be explained or avoided by a reply, the court may, in its discretion, grant time for replying. If the answer, or answer and reply, raise only questions of law, or put in issue immaterial statements, not affecting the substantial rights of the parties, the court shall proceed to hear, or fix a day for hearing, the argument of the case.

SEC. 479. If judgment be given for the applicant, he shall recover the damages which he shall have sustained as found by the jury, or as may be determined by the court or referees, upon a reference to be ordered, together with costs; and for such damages and costs an execution may issue; and a peremptory mandate shall also be awarded without delay.

SEC. 480. The writ shall be served in the same manner as a summons in a civil action, except when otherwise expressly directed by order of the court.

SEC. 481. When a peremptory mandate has been issued and directed to any inferior tribunal, corporation, board, or person, if it appear to the court that any member of such tribunal, corporation, or board, or such person

upon whom the writ has been personally served, has, without just excuse, refused or neglected to obey the same, the court may, upon motion, impose a fine not exceeding one thousand dollars. In case of persistence in a refusal of obedience, the court may order the party to be imprisoned for a period not exceeding three months, and may take any orders necessary and proper for the complete enforcement of the writ. If a fine be imposed upon a judge or officer who draws a salary from the Territory or county, a certified copy of the order shall be forwarded to the Territorial or county treasurer, as the case may be, and the amount thereof may be retained from the salary of such judge or officer. Such judge or officer, for his wilful disobedience, shall also be deemed guilty of a misdemeanor in office.

Of Contempts and their Punishments.

SEC. 482. The following acts or omissions shall be deemed contempts:

1. Disorderly, contemptuous, or insolent behavior towards the judge whilst holding court, or engaged in his judicial duties at chambers, or towards referees or arbitrators whilst sitting on a reference or arbitration, tending to interrupt the due course of a trial, reference, or arbitration, or other judicial proceeding.
2. A breach of the peace, boisterous conduct, or violent disturbance in presence of the court or its immediate vicinity, tending to interrupt the due course of a trial, or other judicial proceeding.
3. Disobedience or resistance to any lawful writ, order, rule, or process issued by the court or judge at chambers.
4. Disobedience of a subpœna duly served, or refusing to be sworn or answer as a witness.
5. Rescuing any person or property in the custody of any officer, by virtue of an order or process of such court or judge at chambers.

SEC. 483. When a contempt is committed in the immediate view and presence of the court or judge at chambers, it may be punished summarily; for which an order shall be made reciting the facts as occurring in such immediate view and presence, adjudging that the person proceeded against is thereby guilty of a contempt, and that he be punished as therein prescribed. When the contempt is not committed in the immediate view and presence of the court or judge at chambers, an affidavit shall be presented to the court or judge of the facts constituting the contempt, or a statement of the facts by the referees or arbitrators.

SEC. 484. When the contempt is not committed in the immediate view and presence of the court or judge, a warrant of attachment may be issued to bring the person charged to answer, or without a previous arrest, a warrant of commitment may upon notice, or upon an order to show cause, be granted; and no warrant of commitment shall be issued without such previous attachment to answer, or such notice or order to show cause.

SEC. 485. Whenever a warrant of attachment is issued pursuant to this chapter, the court or judge shall direct whether the person charged may be let to bail for his appearance upon the warrant, or detained in custody without bail; and if he may be bailed, the amount in which he may be let to bail. The directions given in this respect shall be specified in the warrant, or endorsed thereon.

SEC. 486. Upon executing the warrant of attachment, the sheriff shall keep the person in custody, bring him before the court or judge, and detain him until an order be made in the premises, unless the person arrested entitle himself to be discharged, as provided in the next section.

SEC. 487. When a direction to let the person arrested to bail is contained in the warrant of attachment, or endorsed thereon, he shall be discharged from the arrest, upon executing and delivering to the officer, at any time before the return day of the warrant, a written undertaking, with two sufficient sureties, to the effect that the person arrested will appear on the return of the warrant, and abide the order of the court or judge thereupon; or they will pay as may be directed the sum specified in the warrant.

SEC. 488. The officer shall return the warrant of arrest and the undertaking, if any, received by him from the person arrested, by the return day specified therein.

SEC. 489. When the person arrested has been brought up or appeared, the court or judge shall proceed to investigate the charge, and shall hear any answer which the person arrested may make to the same, and may examine witnesses for or against him, for which an adjournment may be had from time to time, if necessary.

SEC. 490. Upon the answer and evidence taken, the court or judge shall determine whether the person proceeded against is guilty of the contempt charged, and if it be adjudged that he is guilty of the contempt, a fine may be imposed on him not exceeding five hundred dollars, or he may be imprisoned not exceeding five days, or both.

SEC. 491. When the contempt consists in the omission to perform an act which it is yet in the power of the person to perform, he may be imprisoned until he have performed it, and in that case the act shall be specified in the warrant of commitment.

SEC. 492. Persons proceeded against according to the provisions of this chapter, shall also be liable to indictment for the same misconduct, if it be an indictable offence; but the court before which a conviction is had on the indictment, in passing sentence, shall take into consideration the punishment before inflicted.

SEC. 493. When the warrant of arrest has been returned served, if the person arrested do not appear on the return day, the court or judge may, issue another warrant of arrest, or may order the undertaking to be prosecuted, or both. If the undertaking be prosecuted, the measure of damages in the action shall be the extent of the loss or injury sustained by the aggrieved party, by reason of the misconduct for which the warrant was issued, and the costs of the proceedings.

SEC. 494. Whenever by the provisions of this chapter an officer is required to keep a person arrested on a warrant of attachment in custody, and to bring him before a court or judge, the inability from illness or otherwise of the person to attend shall be a sufficient excuse for not bringing him up; and the officer shall not confine a person arrested upon the warrant in a prison, or otherwise restrain him of personal liberty, except so far as may be necessary to secure his personal attendance.

SEC. 495. The judgment and orders of the court or judge made in cases of contempt, shall be final and conclusive. The punishment shall be by fine or by imprisonment, but no fine shall exceed the sum of five hundred dollars, and no imprisonment shall exceed the period of five days, except as provided in section four hundred and ninety-one.

Of Costs.

SEC. 496. The measure and mode of compensation of attorneys and counsellors shall be left to the agreement, express or implied, of the parties. But there shall be allowed to the prevailing party in any action in the supreme court and district courts, certain sums by way of indemnity for his expenses in the action, or special proceeding in the nature of an action, which allowances are in this chapter termed costs.

SEC. 497. Costs shall be allowed of course to the plaintiff upon a judgment in his favor, in the following cases:

1. In an action for the recovery of real property;
2. In an action to recover the possession of personal property, when the value of the property amounts to one hundred dollars or over. Such value shall be determined by the jury, court, or referee by whom the action is tried;
3. In an action for the recovery of money or damages where plaintiff recovers one hundred dollars or over;
4. In a special proceeding in the nature of an action.

SEC. 498. When several actions are brought on one bond, undertaking, promissory note, bill of exchange, or other instrument in writing, or in any other case for the same cause of action, against several parties who might have been joined as defendants in the same action, no costs shall be allowed to the plaintiff in more than one of such actions, which may be at his election, if the party proceeded against in the other actions were at the commencement of the previous action openly within this Territory; but the disbursements of the plaintiff shall be allowed to him in each action.

SEC. 499. Costs shall be allowed of course to the defendant upon a judgment in his favor in the actions mentioned in section 497, and in a special proceeding in the nature of an action.

SEC. 500. In other actions than those mentioned in section 497, costs may be allowed or not; and if allowed, may be apportioned between the parties, on the same or adverse sides, in the discretion of the court; but no costs shall be allowed in an action for the recovery of money or damages when the plaintiff recovers less than one hundred dollars, nor in an action to recover the possession of personal property, when the value of the property is less than one hundred dollars.

SEC. 501. When there are several defendants in the actions mentioned in section 497, not united in interest, and making separate defences by separate answers, and the plaintiff fails to recover judgment against all, the court shall award costs to such of the defendants as have judgment in their favor.

SEC. 502. In the following cases the costs of an appeal shall be in the discretion of the court:

1. When a new trial is ordered;
2. When a judgment is modified.

SEC. 503. When allowed, costs shall be as follows:

1. For all proceedings previous to the issue, twenty dollars;
2. For the trial of every issue of fact, and the argument of every issue of law in an action, or special proceeding in the nature of an action, thirty dollars;
3. For the argument of every contested motion in the progress of an action, or special proceeding in the nature of an action, ten dollars;
4. For proceedings subsequent to trial or argument, until judgment or appeal, ten dollars;
5. For the argument of every appeal, thirty dollars;
6. For proceedings subsequent to the argument of the appeal, until judgment is entered thereon, twenty dollars.

SEC. 504. In actions for the recovery of money or damages, or the possession of personal property, or for the recovery of real property, the plaintiff shall be entitled to the additional allowance of five per cent. on the first one thousand dollars, and two per cent. on all over that sum, upon the amount of the verdict, or the value of the property recovered; such value to be determined at the trial, or at the time the judgment is applied for, in case no answer shall have been put in. In the actions specified in this section, the defendant, in case of judgment for the defendant, shall be entitled to a similar percentage on the amount or the value of the property claimed by the plaintiff. But such allowance shall in no case exceed five hundred dollars: Provided, that in any action, or special proceeding in the nature of an action, which may be dismissed or discontinued at the instance of either party, no percentage shall be allowed as herein provided.

SEC. 505. When recovery is had upon failure of the defendant to answer, the plaintiff shall be entitled to recover as follows:

1. In actions for the recovery of real property, and in actions in which the taking of an account, or the examination of a long account, or the proof of any fact, shall be necessary to enable the court to carry the judgment into effect, and a reference be ordered to take or examine the account or determine the fact; and in actions in which a jury shall be called to determine a fact necessary to carry the judgment into effect, or to assess damages, the same costs as in actions in which issues are joined;
2. In other actions, thirty dollars.

SEC. 506. The fees of referees shall be five dollars to each for every day spent in the business of the reference; but the parties may agree in writing upon any other rate of compensation, and thereupon such rate shall be allowed.

SEC. 507. When an application is made to a court or referee to postpone a trial, the payment to the adverse party of a sum not exceeding twenty dollars, besides the fees of witnesses, may be imposed as the condition of granting the postponement.

SEC. 508. When in an action for the recovery of money only, the defendant alleges in his answer that before the commencement of the action he tendered to the plaintiff the full amount to which he was entitled, and

thereupon deposits in court for the plaintiff the amount so tendered, and the allegation be found to be true, the plaintiff shall not recover costs, but shall pay costs to the defendant.

SEC. 509. In an action prosecuted or defended by an executor, administrator, trustee of express trust, or a person expressly authorized by statute, costs may be recovered as in action by and against a person prosecuting or defending in his own right; but such costs shall by the judgment be made chargeable only upon the estate, fund, or party represented, unless the court shall direct the same to be paid by the plaintiff or defendant personally, for mismanagement or bad faith in the action or defence.

SEC. 510. When the decision of a court of inferior jurisdiction in a special proceeding is brought before a court of higher jurisdiction for a review in any other way than by appeal, the same costs shall be allowed as in cases on appeal, and may be collected by execution or in such manner as the court may direct, according to the nature of the case.

SEC. 511. On the commencement of an action, the plaintiff, and on the filing of notice of appeal from a final judgment, the appellant, shall pay to the clerk three dollars, to be applied towards the district law library under the order of the judge.

SEC. 512. The party in whose favor judgment is rendered and who claims his costs, shall deliver to the clerk of the court a memorandum of the items of the costs to which he is entitled. He may include in the costs all the necessary disbursements in the action or proceeding, including the fees of officers allowed by law, the fees of witnesses, the necessary expenses, taking depositions by commission or otherwise, the compensation of referees, and the fees paid on the commencement of the action or on filing the notice of appeal. The memorandum shall be accompanied by the affidavit of the party that the items are correct to the best of his knowledge and belief, and that the disbursements have been necessarily incurred in the action. The memorandum and affidavit shall be delivered to the clerk within three days after the rendition of the verdict.

SEC. 513. The clerk shall include in the judgment entered up by him the costs, the percentage allowed, and any interest on the verdict from the time it was rendered.

SEC. 514. When the plaintiff in an action resides out of the Territory, or is a foreign corporation, security for the costs and charges which may be awarded against such plaintiff may be required by the defendant. When required, all proceedings in the action shall be stayed until an undertaking, executed by two or more persons, be filed with the clerk to the effect that they will pay such costs and charges as may be awarded against the plaintiff by judgment or in the progress of the action, not exceeding the sum of three hundred dollars. A new or an additional undertaking may be ordered by the court or judge upon proof that the original undertaking is insufficient security, and proceedings in the action stayed until such new or additional undertaking be executed and filed.

SEC. 515. Each of the sureties on the undertaking mentioned in the last section shall annex to the same an affidavit that he is a resident and householder or freeholder within the county, and is worth double the amount

specified in the undertaking over and above all his just debts and liabilities, exclusive of property exempt from execution.

SEC. 516. After the lapse of thirty days from the service of notice that security is required, or of an order for new or additional security, upon proof thereof, and that no undertaking as required has been filed, the court or judge may order the action to be dismissed.

Of Motions, Orders, Notices, Service of Papers, and Miscellaneous Provisions.

SEC. 517. Every direction of a court or judge made or entered in writing, and not included in a judgment, is denominated an order. An application for an order is a motion.

SEC. 518. Motions shall be made in the county in which the action is brought, or in an adjoining county in the same district.

SEC. 519. When a written notice of a motion is necessary, it shall be given, if the court be held in the same district with both parties, five days before the time appointed for the hearing; otherwise ten days, but the court or judge may prescribe a shorter time.

SEC. 520. When a notice of a motion is given, or an order to show cause is made returnable before a judge out of court, and at the time fixed for the motion, or on the return day of the order, the judge is unable to hear the parties, the matter may be transferred by his order to some other judge before whom it might originally have been brought.

SEC. 521. Written notices and other papers, when required to be served on the party or attorney, shall be served in the manner prescribed in the next three sections, when not otherwise provided; but nothing in this chapter shall be applicable to original or final process, or any proceedings to bring a party into contempt.

SEC. 522. The service may be personal, by delivery to the party or attorney on whom the service is required to be made, or it may be as follows:

1st. If upon an attorney, it may be made during his absence from his office, by leaving the notice or other papers with his clerk therein, or with a person having charge thereof; or when there is no person in the office, by leaving them, between the hours of eight in the morning and six in the afternoon, in a conspicuous place in the office; or if it be not open, so as to admit of such service, then by leaving them at the attorney's residence with some person of suitable age and discretion; and if his residence be not known, then by putting the same, enclosed in an envelope, into the post-office, directed to such attorney.

2d. If upon a party, it may be made by leaving the notice or other paper at his residence between the hours of eight in the morning and six in the evening, with some person of suitable age and discretion; and if his residence be not known, by putting the same, enclosed in an envelope, into the post-office, directed to such party.

SEC. 523. Service by mail may be made where the person making the

service and the person on whom it is to be made, reside in different places, between which there is a regular communication by mail.

SEC. 524. In case of service by mail, the notice or other paper shall be deposited in the post-office, addressed to the person on whom it is to be served, at his place of residence, and the postage paid. And in such case, the time of service shall be increased one day for every twenty miles distance between the place of the deposit and the place of the address.

SEC. 525. A defendant shall be deemed to appear in an action when he answers, demurs, or gives the plaintiff written notice of his appearance, or when an attorney gives notice of appearance for him. After appearance, a defendant or his attorney shall be entitled to notice of all subsequent proceedings of which notice is required to be given. But where a defendant has not appeared, service of notice or papers need not be made upon him, unless he be imprisoned for want of bail.

SEC. 526. When a plaintiff or a defendant who has appeared resides out of the Territory, and has no attorney in the action or proceeding, the service may be made on the clerk for him. But in all cases where a party has an attorney in the action or proceeding, the service of papers, when required, shall be upon the attorney instead of the party, except of subpœnas, of writs, and other process issued in the suit, and of papers to bring him into contempt.

SEC. 527. Successive actions may be maintained upon the same contract or transaction, whenever, after the former action, a new cause of action arises therefrom.

SEC. 528. Whenever two or more actions are pending at one time between the same parties, and in the same court, upon causes of action which might have been joined, the court may order the actions to be consolidated into one.

SEC. 529. An action may be brought by one person against another, for the purpose of determining an adverse claim which the latter makes against the former for money or property upon an alleged obligation; and also against two or more persons, for the purpose of compelling one to satisfy a debt due to the other, for which the plaintiff is bound as security.

SEC. 530. The clerk shall keep among the records of the court a register of actions. He shall enter therein the title of the action, with brief notes under it, from time to time, of all papers filed and proceedings had therein.

SEC. 531. When there are three referees or three arbitrators, all shall meet, but two of them may do any act which might be done by all.

SEC. 532. The time within which an act is to be done, as provided in this chapter, shall be computed by excluding the first day and including the last. If the last day be Sunday it shall be excluded.

SEC. 533. An affidavit, notice, or other paper, without the title of the action or proceeding in which it is made, or with a defective title, shall be as valid and effectual for any purpose as if duly entitled, if it intelligibly refer to such action or proceeding.

SEC. 534. When a cause of action has arisen in another State, or in a foreign country, and by the laws thereof an action thereon cannot there be maintained against a person by reason of the lapse of time, an action thereon shall not be maintained against him in this Territory, except in favor of a citizen thereof, who has held the cause of action from the time it accrued.

Of Proceedings in Civil Cases in Justices' Courts.

Of the Parties, and the Time and Place of commencing action in Justices' Courts.

SEC. 535. The provisions of this chapter, as to parties to actions, shall be applicable to actions of which a justice's court has jurisdiction.

SEC. 536. Parties in justices' courts may prosecute or defend in person, or by attorney; and any person, on the request of a party, may act as his attorney, except that the constable by whom the summons or jury process was served shall not appear or act on the trial in behalf of either party.

SEC. 537. No person shall be held to answer to any summons issued against him from a justice's court in civil action in any precinct other than the one in which he or the plaintiff shall reside, except in the cases following:

1. When there shall be no justice's court for the precinct or village in which the defendant or plaintiff may reside, or no justice competent to act on the case.
2. When two or more persons shall be jointly, or jointly and severally bound in any debt or contract, or otherwise jointly liable in the same action, and reside in different precincts of the same county, or in different counties, the plaintiff may prosecute his action in a justice's court of the precinct or county in which any of the debtors or other persons liable may reside.
3. In cases of injury to the person, or to real or personal property, the plaintiff may prosecute his action in the precinct where the injury was committed, or where the defendant may be found.
4. Where personal property, unjustly taken or detained, is claimed, or damages therefor are claimed, the plaintiff may bring his action in any precinct or county in which the property may be found, or in which the property was taken.
5. When the defendant is a non-resident of the county, he may be sued in any precinct, village, or city wherein he may be found.
6. When a person has contracted to perform any obligation at a particular place and resides in another, he may be sued in the precinct in which such obligation is to be performed, or in which he resides.
7. When the foreclosure of a mortgage or the enforcement of a lien upon personal property is sought by the action, the plaintiff may sue in the precinct, village, or city where the property is situated.

SEC. 538. Judgment, upon confession, may be entered up in any justice's court in the Territory specified in the confession.

SEC. 539. Justices' courts shall have jurisdiction of an action upon the voluntary appearance of the parties, without summons, without regard to their residences or the place where the cause of action arose, or the subject matter of the action may exist.

Summons, Arrest, Attachment, and Claim of Personal Property.

SEC. 540. Actions in justices' courts shall be commenced by filing a copy of the account, note, bill, bond, or instrument upon which the action is brought; or a concise statement in writing of the cause of action and the issuance of a summons thereon, or by the voluntary appearance and pleadings of the parties without summons. In the latter case, the action shall be deemed commenced at the time of appearance.

SEC. 541. When a guardian is necessary, he shall be appointed by the justice as follows:—

1. If the infant be plaintiff, the appointment shall be made before the summons is issued, upon the application of the infant, if he be of the age of fourteen years or upwards; if under that age, upon the application of some relative or friend. The consent in writing of the guardian to be appointed, and to be responsible for costs, if he fail in the action, shall be first filed with the justice.

2. If the infant be defendant, the guardian shall be appointed at the time the summons is returned, or before the pleadings. It shall be the right of the infant to nominate his own guardian, if the infant be over fourteen years of age and the proposed guardian be present and consent in writing to be appointed. Otherwise, the justice may appoint any suitable person who gives such consent.

SEC. 542. The summons shall be addressed to the defendant by name or, if his name be unknown, by a fictitious name; and shall summon him to appear before the justice at his office (naming its precinct or village), and at a time specified therein—to answer the complaint of the plaintiff, for a cause of action therein described in general terms, sufficient to apprise the defendant of the nature of the claim against him; and, in action for money or damages, shall state the amount for which the plaintiff will take judgment, if the defendant fail to appear and answer. It shall be subscribed by the justice before whom it is returnable.

SEC. 543. The time mentioned in the summons for the appearance of the defendant and the time of service shall be as follows:—

1. Where the summons is accompanied by an order to arrest the defendant, it shall be returnable immediately.

2. When the defendant is not a resident of the county, or where the plaintiff is not a resident and gives the security required by this chapter, it shall be returnable not more than two days from its date, and shall be served at least one day before the time for appearance.

3. In all other cases it shall be returnable in not less than six nor more than ten days from its date, and shall be served at least four days before the time for appearance.

SEC. 544. The summons shall be served by the sheriff or a constable of the county as follows:—

1. If the action be against a corporation, by the delivery of a copy to the president or other head of the corporation, or to the secretary, cashier, or managing agent thereof; or when no such officer resides in the county, to a director or stockholder resident therein;

2. If against a minor under the age of fourteen years, by delivery of a copy to such minor, and also to his father, mother, or guardian; or if there be none within the county, then to any person having the care or control of such minor, or with whom he resides, or in whose service he is;

3. If against a person judicially declared to be of unsound mind, or incapable of conducting his own affairs, and for whom a guardian has been appointed, by delivery of a copy to such guardian;

4. In all other cases, by the delivery of the copy to the defendant personally.

SEC. 545. If the plaintiff annex to his complaint, or file with the justice at the time of issuing the summons, a copy of the account or promissory note, bill of exchange, or other obligation, for the payment of money, or for a specified amount of property at a valuation fixed therein, upon which the action is brought, the defendant shall be deemed to admit such account, note, bill, or obligation, unless he specifically deny the same in his answer, and verify the answer by his oath.

SEC. 546. An order to arrest the defendant may be endorsed on a summons issued by the justice, and the defendant may be arrested thereon by the sheriff or constable at the time of serving the summons, and brought before the justice, and there detained until duly discharged in the following cases, arising after the passage of this chapter:—

1. In an action for the recovery of money or damages, on a cause of action arising upon contract, express or implied; when the defendant is about to depart from the Territory with intent to defraud his creditors; or where the action is for a wilful injury to the person, or for taking, detaining, or injuring personal property;

2. In an action for a fine or penalty, or for money or property embezzled or fraudulently misapplied or converted to his own use by an attorney, factor, broker, agent, or clerk, in the course of his employment as such, or by any other person in a fiduciary capacity;

3. When the defendant has been guilty of a fraud in contracting the debt, or incurring the obligation for which the action is brought;

4. When the defendant has removed, concealed, or disposed of his property, or is about to do so, with intent to defraud his creditors. But no female shall be arrested in any action.

SEC. 547. Before an order for an arrest shall be made, the party applying shall prove to the satisfaction of the justice, by the affidavit of himself or some other person, the facts on which the application is founded. The plaintiff shall also execute and deliver to the justice a written undertaking, with two or more sureties, to the effect that if the defendant recover judgment, the plaintiff will pay to him all costs that may be awarded to the defendant, and all damages which he may sustain by reason of the arrest, not exceeding the sum specified in the undertaking, which shall be at least two hundred dollars.

SEC. 548. The defendant, immediately upon being arrested, shall be taken to the office of the justice who made the order, and if he be absent or unable to try the action, or if it be made to appear to him by the affidavit of defendant that he is a material witness in the action, the officer shall immediately take the defendant before the nearest justice of the county; who shall take cognizance of the action, and proceed thereon, as if the summons had been issued and the order of arrest made by him.

SEC. 549. The officer making the arrest shall immediately give notice thereof to the plaintiff or his attorney or agent, and endorse on the summons and subscribe a certificate, stating the time of serving the same, the time of the arrest, and of his giving notice to the plaintiff.

SEC. 550. The officer making an arrest shall keep the defendant in custody until duly discharged by order of the justice.

SEC. 551. The defendant under arrest on his appearance with the officer may demand a trial immediately; and upon such demand being made, the trial shall not be delayed beyond three hours, except by the trial of another action pending at the time; or he may have an adjournment, and be discharged on giving bail, as provided in the next section. An adjournment at the request of the plaintiff beyond three hours, shall discharge the defendant from arrest, but the action may proceed notwithstanding; and the defendant shall be subject to arrest on the execution in the same manner as if he had not been so discharged.

SEC. 552. If the defendant on his appearance demand an adjournment, the same shall be granted on condition that he execute and file with the justice an undertaking, with two or more sufficient sureties, to be approved by the justice, to the effect that he will render himself amenable to the process of the court during the pendency of the action, and such as may be issued to enforce the judgment therein; or that the sureties will pay to the plaintiff the amount of any judgment which he may recover in the action. On filing the undertaking specified in this section, the justice shall order the defendant to be discharged from custody.

SEC. 553. In an action upon a contract, express or implied, made after the passage of this chapter for the direct payment of money, which contract is made or is payable in this Territory, and is not secured by mortgage upon real or personal property, the plaintiff at the time of issuing the summons, or at any time afterwards, may have the property of the defendant attached as security for the satisfaction of any judgment that may be recovered, unless the defendant give security to pay such judgment as hereinafter provided.

SEC. 554. A writ to attach the property of the defendant shall be issued by the justice on receiving an affidavit by or on behalf of the plaintiff, showing that the defendant is indebted to the plaintiff (specifying the amount of such indebtedness over and above all legal set-offs, or counter-claims) upon a contract express or implied, for the direct payment of money, that such contract was made after the passage of this chapter, and was made or is payable in this Territory, and that the payment of the same has not, been secured by any mortgage on real or personal property.

SEC. 555. Before issuing the writ the justice shall require a written undertaking on the part of the plaintiff, with two or more sufficient sureties, to the effect that if the defendant recover judgment, the plaintiff will pay all costs that may be awarded to the defendant, and all damages which he may sustain by reason of the attachment.

SEC. 556. The writ may be directed to the sheriff or any constable of the county, and shall require him to attach and safely keep all the property of the defendant within his county not exempt from execution, or so much thereof as may be sufficient to satisfy the plaintiff's demand, the amount of which shall be stated in conformity with the complaint, unless the defendant

give him security by the undertaking of two sufficient sureties, in an amount sufficient to satisfy such demand, besides costs; in which case, he take such undertaking and release such property.

SEC. 557. The sections of this chapter, from section one hundred and twenty-four to section one hundred and forty-one, both inclusive, shall be applicable to attachments issued in justices' courts, the word "constable" being substituted for the word "sheriff" whenever the writ is directed to a constable, and the word "justice" being substituted for the word "judge."

SEC. 558. The plaintiff, in an action to recover the possession of personal property, may, at the time of issuing the summons, or at any time before answer, claim the delivery of such property to him, as provided in this chapter.

SEC. 559. When a delivery is claimed, an affidavit shall be made by the plaintiff, or by some one in his behalf, showing—

1. That the plaintiff is the owner of the property claimed (particularly describing it), or is lawfully entitled to the possession thereof.
2. That the property is wrongfully detained by the defendant.
3. The alleged cause of the detention thereof, according to his best knowledge, information, and belief.
4. That the same has not been taken for a tax, assessment, or fine, pursuant to a statute; or seized under an execution, on an attachment against the property of the plaintiff; or if seized, that it is by statute exempt from such seizure; and,
5. The actual value of the property not exceeding one hundred dollars.

SEC. 560. The justice shall thereupon, by an endorsement in writing upon the affidavit, order the sheriff or a constable of the county to take the same from the defendant and deliver it to the plaintiff, upon receiving the undertaking mentioned in the following section.

SEC. 561. Upon the receipt of the affidavit, and order, with a written undertaking, executed by two or more sufficient sureties, approved by the officer, to the effect that they are bound in double the value of the property as stated in the affidavit, for the prosecution of the action, for the return of the property to the defendant, if return thereof be adjudged, and for the payment to him of such sum as may, for any cause, be recovered against the plaintiff, the officer shall forthwith take the property described in the affidavit, if it be in the possession of the defendant or his agent, and retain it in his custody. He shall also, without delay, serve on the defendant a copy of the affidavit, order, and undertaking, by delivering the same to him personally, if he can be found within the county, or to his agent, from whose possession the property is taken, or if neither can be found within the county, by leaving them at the usual place of abode of either within the county, with some person of suitable age and discretion, or if neither have any known place of abode within the county, by putting them into the nearest post-office, directed to the defendant.

SEC. 562. The defendant may, within two days after the service of a copy of the affidavit and undertaking, give notice to the officer that he excepts to the sufficiency of the sureties. If he fails to do so, he shall be deemed to have waived all objection to them. When the defendant excepts, the sureties shall justify on notice before the justice; and the officer shall

be responsible for the sufficiency of the sureties until the objection to them is either waived as above provided, or until they justify. If the defendant except to the sureties, he cannot reclaim the property as provided in the next section.

SEC. 563. At any time before the delivery of the property to the plaintiff, the defendant may, if he do not except to the sureties of the plaintiff, require the return thereof, upon giving to the officer a written undertaking, executed by two or more sufficient sureties, to the effect that they are bound, in double the value of the property, as stated in the affidavit of the plaintiff, for the delivery thereof to the plaintiff, if such delivery be adjudged, and for the payment to him of such sum as may for any cause be recovered against the defendant. If a return of the property be not so required within two days after the taking and service of notice to the defendant, it shall be delivered to the plaintiff, except as provided in this chapter.

SEC. 564. The defendant's sureties, upon reasonable notice to the plaintiff, shall justify before the justice; and upon such justification, the officer shall deliver the property to the defendant. The officer shall be responsible for the defendant's sureties until they justify, or until the justification is completed or expressly waived, and may retain the property until that time; but if they, or others in their place, fail to justify at the time appointed, he shall deliver the property to the plaintiff.

SEC. 565. If the property or any part thereof be concealed in a building or enclosure, the officer shall publicly demand its delivery; and if it be not delivered, he shall cause the building or enclosure to be broken open, and take the property into his possession.

SEC. 566. When the officer shall have taken property, as in this chapter provided, he shall keep it in a secure place, and deliver it to the party entitled thereto, upon receiving his lawful fees for taking, and his necessary expenses for keeping the same.

SEC. 567. If the property taken be claimed by any other person than the defendant or his agent, and such person make affidavit of his title thereto, or right to the possession thereof, stating the grounds of such title or right, and serve the same upon the officer, the officer shall not be bound to keep the property, or deliver it to the plaintiff, unless the plaintiff, on demand of him or his agent, indemnify the officer against such claim by an undertaking, executed by two sufficient sureties, accompanied by their affidavits, that they are each worth double the value of the property as specified in the affidavit of the plaintiff, over and above their debts and liabilities, exclusive of property exempt from execution, and are freeholders or householders of the county; and no claim to such property by any other than the defendant or his agent shall be valid against the officer, unless so made.

SEC. 568. The officer shall return the order and affidavit, with his proceedings thereon, to the justice within five days after taking the property mentioned therein.

SEC. 569. The qualification of sureties on the several undertakings required by this chapter in justices' courts, shall be as follows:

1st. Each of them shall be a resident, and householder or freeholder within the county.

2d. Each shall be worth double the amount stated in the undertaking, over and above all his debts and liabilities, exclusive of property exempt from execution.

SEC. 570. For the purpose of justification, each of the sureties shall attend before the justice at the time mentioned in the notice, and may be examined on oath, on the part of the adverse party, touching his sufficiency, in such manner as the justice, in his discretion, may think proper. The examination shall be reduced to writing, and subscribed by the sureties if required.

SEC. 571. If the justice find the sureties sufficient, he shall annex the examination to the undertaking, endorse his allowance thereon, and file the same, and the officer shall thereupon be exonerated from liability.

Pleadings and Trial.

SEC. 572. The pleadings in justices' courts shall be:

1. The complaint by the plaintiff, stating the cause of the action.
2. The answer by the defendant, stating the ground of the defence.

SEC. 573. The pleadings shall be in writing, and verified by the oath of the party, his agent, or attorney, when the action is:

1. For the foreclosure of any mortgage, or the enforcement of any lien on personal property.
2. For a forcible or unlawful entry upon, or a forcible or unlawful detention of lands, tenements, or other possessions.

SEC. 574. When the pleadings are oral, the substance of them shall be entered by the justice in his docket; when in writing, they shall be filed in his office, and a reference to them made in the docket. Pleadings shall not be required to be in any particular form, but shall be such as to enable a person of common understanding to know what is intended.

SEC. 575. The complaint shall state in a plain and direct manner the facts constituting the cause of action.

SEC. 576. The answer may contain a denial of any of the material facts stated in the complaint, which the defendant believes to be untrue, and also a statement, in a plain and direct manner, of any other facts constituting a defence, or a counter-claim upon which an action may be brought by the defendant against the plaintiff in a justices' court.

SEC. 577. A statement in the answer that the party has not sufficient knowledge or information in respect to a particular allegation in the previous pleading of the adverse party to form a belief, shall be deemed equivalent to a denial.

SEC. 578. When the cause of action or counter-claim arises upon an account or instrument for the payment of money only, it shall be sufficient for the party to deliver a copy of the account or instrument to the court,

and to state that there is due to him thereupon, from the adverse party, a specified sum, which he claims to recover or set-off. The court may, at the time of the pleading, require that the original account or instrument be exhibited to the inspection of the adverse party, and a copy to be furnished; or, if it be not so exhibited and a copy furnished, may prohibit its being afterwards given in evidence.

SEC. 579. When the defendant answers the complaint, every material allegation therein, not denied by the answer, shall, on the trial, be taken to be true.

SEC. 580. Either party may object to a pleading of his adversary, or to any part thereof, that it is not sufficiently explicit to enable him to understand it, or that it contains no cause of action or defence, although it be taken as true. If the court deem the objection well founded, it shall order the pleading to be amended, and if the party refuse to amend, the defective pleading shall be disregarded.

SEC. 581. A variance between the proof on the trial and the allegations in a pleading shall be disregarded as immaterial, unless the court be satisfied that the adverse party has been misled to his prejudice thereby.

SEC. 582. The pleadings may be amended at any time before the trial, to supply a deficiency or omission, when by such amendment substantial justice will be promoted. If the amendment be made after issue, and it be made to appear to the satisfaction of the court by oath that an adjournment is necessary to the adverse party in consequence of such amendment, an adjournment shall be granted. The court may also, in its discretion, require as a condition of an amendment the payment of costs to the adverse party, to be fixed by the court, not exceeding twenty dollars; but such payment shall not be required unless an adjournment is made necessary by the amendment; nor shall an amendment be allowed after a witness is sworn on the trial, when an adjournment thereby will be made necessary.

SEC. 583. The parties shall not be at liberty to give evidence by which the question of title to real property shall be raised on the trial before a justice, and if it appear from the plaintiff's own showing on the trial, or from the answer of the defendant, verified by his oath, or that of his agent or attorney, that the determination of the action will necessarily involve the decision of a question of title to real property, the justice shall suspend all further proceedings in the action and certify the pleadings; or if the pleadings be oral, a transcript of the same from his docket to the district court of the county; and from the time of filing such pleadings or transcript with the district clerk, the district court shall have over the action the same jurisdiction as if it were originally commenced therein. *Provided*, that when the pleadings or transcript are certified to the district court upon the answer of the defendant, he shall file an undertaking with two or more sufficient sureties to be approved by the justice, to the effect that they will pay all costs of the action if it be decided against him by the district court.

SEC. 584. If at any time before the trial it appear, to the satisfaction of the justice before whom the action is brought by affidavit of either party, that such justice is a material witness for either party, or if either party make affidavit that he has reason to believe, and does believe, that he cannot have a fair and impartial trial before such justice by reason of the

interest of the justice, the action shall be transferred to some other justice of the same or neighboring precinct; and in case a jury be demanded, and affidavit of either party is made that he cannot have a fair and impartial trial on account of the bias or prejudice of the citizens of the precinct against him, the action shall be transferred to some other justice of the peace in the precinct, in the discretion of the justice. The justice to whom an action may be transferred by the provisions of this section, shall have and exercise the same jurisdiction over the action as if it had been originally commenced before him. The justice ordering the transfer of the action to another justice shall immediately transmit to the latter, on payment of costs, all the papers in the action, together with a certified transcript from his docket of the proceedings therein.

Upon the return day of the summons, if a jury be required, or if the justice be actually engaged in other official business, he may adjourn the trial without the consent of either party as follows:

1st. When a party who is not a resident of the county is in attendance, the adjournment not to exceed twenty-four hours; when the defendant in attendance is under arrest, the adjournment not to exceed three hours.

2d. In other cases not to exceed five days.

SEC. 585. The trial may be adjourned by consent, or upon application of either party, without the consent of the other, for a period not exceeding ten days (except as provided in the next section), as follows:

1st. The party asking the adjournment shall, if required by his adversary, prove by his own oath, or otherwise, that he cannot, for want of material testimony which he expects to procure, safely proceed to trial.

2d. The party asking the adjournment shall also, if required by the adverse party, consent that the testimony of any witness of such adverse party who is in attendance, be then taken by deposition before the justice, which shall accordingly be done; and the testimony so taken may be read on the trial with the same effect, and subject to the same objections, as if the witness were produced.

SEC. 586. An adjournment may be had, either at the time of joining the issue, or at any subsequent time to which the cause may stand adjourned, on application of either party, for a period longer than ten days, but not to exceed ninety days from the time of the return of the summons, upon proof, by the oath of the party or otherwise, to the satisfaction of the justice, that such party cannot be ready for trial before the time to which he desires an adjournment, for the want of material evidence, describing it; and that the delay has not been made necessary by any act or negligence on his part, since the action was commenced, and that he expects to procure the evidence at the time stated by him.

SEC. 587. No adjournment shall be granted for a period longer than ten days upon the application of either party, except upon condition that such party file an undertaking, with sureties, to be approved by the justice, to the effect that they will pay to the opposite party the amount of any judgment which may be recovered against the party applying.

SEC. 588. If the plaintiff fail to appear at the return day of the summons, the action shall be dismissed. If the defendant fail to appear at the return day of the summons, or if either party fail to attend at a day to which the

trial has been adjourned, or fail to make the necessary pleading or proof on his part, the case may, nevertheless, proceed, at the request of the adverse party, and judgment shall be given in conformity with the pleadings and proofs.

SEC. 589. A trial by jury shall be demanded at the time of joining issue; and shall be deemed waived if neither party then demand it. When demanded, the trial of the case shall be adjourned until a time and place fixed for the return of the jury. If neither party desire an adjournment, the time and place shall be determined by the justice, and shall be on the same day, or within the next two days. The jury shall be summoned upon an order of the justice from the citizens of the precinct or county, and not from the bystanders.

SEC. 590. At the time appointed for the trial, the justice shall proceed to call from the jurors for the trial of the issue. The jury, by consent of the parties, may consist of any number more than six nor less than three.

SEC. 591. If a sufficient number of competent and indifferent jurors do not attend, the justice shall direct others to be summoned from the vicinity, and not from the bystanders, sufficient to complete the jury.

SEC. 592. Either party may challenge the jurors. The challenge shall be either peremptory or for cause. Each party shall be entitled to three peremptory challenges. Either party may challenge for cause on any grounds set forth in section 164. Challenges for cause shall be tried by the justice in a summary manner, who may examine the juror challenged and witnesses.

Judgment and Execution.

SEC. 593. Judgment that the action be dismissed without prejudice to a new action may be entered with costs in the following cases:

1. When the plaintiff voluntarily dismisses the action before it is finally submitted;
2. When he fails to appear at the time specified in the summons, or upon adjournment, or within one hour thereafter;
3. When it is objected at the trial, and appears by the evidence, that the action is brought in the wrong county; but if the objection be taken and overruled, it shall be cause only of reversal on appeal, and shall not otherwise invalidate the judgment; if not taken at the trial, it shall be deemed waived, and shall not be cause of reversal.

SEC. 594. When the defendant fails to appear and answer, judgment shall be given for the plaintiff as follows:

1. When a copy of the account, note, bill, or other obligation upon which the action is brought, was filed with the justice at the time the summons was issued, judgment shall be given without further evidence for the sum specified in the summons;
2. In other cases the justice shall hear the evidence of the plaintiff, and render judgment for such sum only as shall appear by the evidence to be just; but in no case exceeding the amount specified in the summons.

SEC. 595. Upon issue joined, if a jury trial be not demanded, the justice

shall hear the evidence and decide all questions of fact and of law, and render judgment accordingly.

SEC. 596. Upon a verdict, the justice shall immediately render judgment accordingly. When the trial is by the justice, judgment shall be entered immediately after the close of the trial, if the defendant has been arrested and is still in custody; in other cases it shall be entered within four days after the close of the trial.

SEC. 597. When the amount found due to either party exceeds the sum for which the justice is authorized to enter judgment, such party may remit the excess, and judgment may be rendered for the residue.

SEC. 598. If the defendant at any time before the trial offer in writing to allow judgment to be taken against him for a specified sum, the plaintiff may immediately have judgment therefor with the costs then accrued; but if he do not accept such offer before the trial, and fail to recover in the action a sum equal to the offer, he shall not recover costs, but costs shall be adjudged against him, and if he recover, deducted from his recovery. But the offer and failure to accept it shall not be given in evidence to affect the recovery otherwise than as to costs, as above provided.

SEC. 599. When a judgment is rendered in a case where the defendant is subject to arrest and imprisonment thereon, it shall be so stated in the judgment, and entered in the docket.

SEC. 600. When the prevailing party is entitled to costs by this chapter, the justice shall add their amount to the verdict; or in case of a failure of the plaintiff to recover, or in case of a dismissal of the action, shall enter up judgment in favor of the defendant for the amount of such costs.

SEC. 601. The justice, on demand of the party in whose favor judgment is rendered, shall give him a transcript thereof, which may be filed and docketed in the office of the district clerk of the county where the judgment was rendered. The time of the receipt of the transcript by the district clerk shall be noted by him thereon, and entered in the docket; and from that time executions may be issued by the district clerk on such judgments to the sheriff of any other county of the Territory in the same manner as upon judgments recovered in the higher courts. All process upon judgments recovered in justices' courts to be executed within the same county, shall be issued by the justice, or his successors in office.

SEC. 602. Executions for the enforcement of a judgment in a justice's court may be issued on the application of the party entitled thereto, at any time within five years from the entry of judgment.

SEC. 603. The execution, when issued by a justice, shall be directed to the sheriff or to a constable of the county, and subscribed by the justice by whom the judgment was rendered, or by his successor in office, and shall bear date the day of its delivery to the officer to be executed. It shall intelligibly refer to the judgment, by stating the names of the parties, and the name of the justice before whom, and of the county, and the precinct or village where, and the time when it was rendered; the amount of judgment, if it be for money; and if less than the whole is due, the true amount due thereon. It shall contain, in like cases, similar directions to

the sheriff or constable as are required by the provisions of this chapter in an execution to the sheriff.

SEC. 604. The sheriff or constable to whom the execution is directed, shall proceed to execute the same in the same manner as the sheriff is required by the provisions of this chapter, to proceed upon executions directed to him; and the constable, when the execution is directed to him, shall be vested for that purpose with all the powers of sheriff.

General Provisions.

SEC. 605. The provisions of this chapter which are referred to, and those also in respect to which no special provision is made, shall be applicable to justices' courts and the proceedings therein.

SEC. 606. Every justice shall keep a book denominated "A Docket," in which he shall enter:

1. The title of every action or proceeding.
2. The object of the action or proceeding; and if a sum of money be claimed, the amount of the demand.
3. The date of the summons, and the time of its return; and if an order to arrest the defendant be made, or a writ of attachment be issued, a statement of these facts.
4. The time when the parties or either of them appear, or their non-appearance if default be made; a minute of the pleadings; if in writing, referring to them; if not in writing, a concise statement of the material parts of the pleading.
5. Every adjournment, stating on whose application, whether on oath, evidence, or consent, and to what time.
6. The demand for a trial by jury, when the same is made, and by whom made; the order for the jury, and the time appointed for the trial and return of the jury.
7. The names of the jury who appear and are sworn; the names of all witnesses sworn, and at whose request.
8. The verdict of the jury, and when received; if the jury disagree and are discharged, the fact of such disagreement and discharge.
9. The judgment of the court, specifying the costs included and the time when rendered.
10. The issuing of execution, when issued, and to whom; the renewals thereof, if any, and when made; and a statement of any money paid to the justice, and when, and by whom.
11. The receipt of a notice of appeal, if any be given.

SEC. 607. The several particulars of the last section specified shall be entered under the title of the action to which they relate, and at the time when they occur. Such entries in a justice's docket, or a transcript thereof, certified by the justice or his successor in office, shall be *prima facie* evidence to prove the facts so stated therein.

SEC. 608. A justice shall keep an alphabetical index to his docket, in which shall be entered the names of the parties to each judgment, with a reference to the page of entry. The names of the plaintiffs shall be entered in the index in the alphabetical order of the first letter of the family names.

SEC. 609. It shall be the duty of every justice, upon the expiration of his term of office, to deposit with his successor his official dockets, as well his own as those of his predecessors which may be in his custody, to be kept as public records. If the office of a justice become vacant by his death or removal from the precinct or village, or otherwise, before his successor is elected and qualified, the dockets in possession of such justice shall be deposited with the district clerk of the county, to be by him delivered to the successor in office of the justice.

SEC. 610. Any justice with whom the docket of his predecessor is deposited, may issue execution on a judgment there entered and unsatisfied, in the same manner and with the same effect as the justice by whom the judgment was entered might have done.

SEC. 611. The justice elected to fill a vacancy shall be deemed the successor of the justice whose office became vacant before the expiration of a full term. When a full term expires, the same or another person elected to take office in the same precinct or village, from that time shall be deemed the successor.

SEC. 612. When two or more justices are equally entitled under the last section to be deemed the successors in office of the justice, the judge of probate shall, by a certificate subscribed by him and filed in the office of the district clerk, designate which justice shall be the successor of a justice going out of office, or whose office has become vacant.

SEC. 613. The summons, execution, and every other paper made or issued by a justice, except a subpœna, shall be filled without a blank left to be filled by another, otherwise it shall be void.

SEC. 614. In case of the sickness, other disability, or necessary absence of a justice on a return of a summons, or at the time appointed for a trial, another justice of the same precinct or village may, at his request, attend in his behalf, and shall thereupon become vested with the power, for the time being, of the justice before whom the summons was returnable. In that case the proper entry of the proceedings before the attending justice, subscribed by him, shall be made in the docket of the justice before whom the summons was returnable. If the case be adjourned, the justice before whom the summons was returnable may resume jurisdiction.

SEC. 615. A justice may, at the request of a party, and on being satisfied that it is expedient, specially depute any discreet person of suitable age, and not interested in the action, to serve a summons or execution with or without an order to arrest the defendant, or with or without a writ of attachment. Such deputation shall be in writing on the process.

SEC. 616. The person so deputed shall have the authority of a constable in relation to the service, execution, and return of such process, and shall be subject to the same obligations.

SEC. 617. A constable, notwithstanding the expiration of his term of office, may proceed and complete the execution of all final process which he has begun to execute, in the same nanner as if he still continued in office, and his sureties shall be liable to the same extent.

SEC. 618. A justice may punish as for contempt persons guilty of the following acts, and no others:

1. Disorderly, contemptuous, or insolent behavior towards the justice while holding the court, tending to interrupt the due course of a trial or other judicial proceedings.
2. A breach of the peace, boisterous conduct, or violent disturbance in the presence of the justice, or in the immediate vicinity of the court held by him, tending to interrupt the due course of trial, or other judicial proceeding.
3. Disobedience or resistance to the execution of a lawful order or process made or issued by him.
4. Disobedience to a subpœna duly served, or refusing to be sworn or answer as a witness.
5. Rescuing any person or property in the custody of any officer by virtue of an order or process of the court held by him.

SEC. 619. When a contempt is committed in the immediate view and presence of the justice, it may be punished summarily, for which an order shall be made reciting the facts as occurring in such immediate view and presence, adjudging that the person proceeded against is thereby guilty of a contempt, and that he be punished as therein prescribed. When the contempt is not committed in the immediate view and presence of the justice, a warrant of arrest may be issued by such justice, on which the person so guilty may be arrested and brought before the justice immediately, when an opportunity to be heard in his defence or excuse shall be given. The justice may thereupon discharge him, or may convict him of the offence. A justice may punish for contempt by fine or imprisonment, or both; such fine not to exceed in any case one hundred dollars, and such imprisonment one day.

SEC. 620. The conviction, specifying particularly the offence and the judgment thereon, shall be entered by the justice in his docket.

SEC. 621. Justices of the peace may issue subpœnas in any action or proceeding in the courts held by them, and final process on any judgment recovered therein, to any part of the county.

SEC. 622. Justices of the peace may issue commissions to take the depositions of witnesses out of this Territory, and settle interrogatories to be annexed thereto, and direct the manner in which the commissions shall be returned. The provisions of this chapter in relation to commissioners, so far as the same are consistent with the jurisdiction and powers of justices' courts, shall be applicable to justices' courts and to actions.

SEC. 623. No action in regard to mining claims shall be maintained before any justice of the peace.

SEC. 624. No justice of the peace shall have power to grant a new trial or arrest a judgment.

SEC. 625. Any party dissatisfied with a judgment rendered in a justice's court, may appeal therefrom to the district court at any time within ten days after the rendition of the judgment.

SEC. 626. The party appealing may in his discretion file with his notice

of appeal an affidavit as to any special matters in the proceedings appealed from; and the justice shall return specially as to all matters contained in such affidavit, and file such affidavit with his return.

SEC. 627. An appeal shall be taken by filing a notice of appeal with the justice and serving a copy on the adverse party.

SEC. 628. Upon receiving the notice of appeal and the undertaking, as required in the next section, and on the payment of the costs of the action, the justice shall transmit to the clerk of the district court a copy of his docket in the case, the undertaking filed, and the notice of appeal.

SEC. 629. An appeal from a justice's court shall not be effectual for any purpose unless an undertaking be filed, with two or more sureties approved by the justice, in a sum equal to twice the amount of the judgment and costs, when the judgment is for the payment of money; or twice the value of the property added to twice the amount of the costs, when the judgment is for the recovery of specific personal property; and shall be to the effect that the appellant will pay the amount of the judgment appealed from, or the value of the property specified in such judgment, as the case may be: Provided, the judgment shall be affirmed by the appellate court, together with the costs on the appeal. If the judgment appealed from be other than for the recovery of money or specific personal property, the amount of the undertaking on appeal to stay proceedings, shall be fixed by the justice, and shall be to the effect that the appellant will pay all costs on appeal, and all damages which respondent may sustain thereby; provided, the judgment appealed from be affirmed.

SEC. 630. If an execution be issued, on the filing of the undertaking, staying all proceedings, the justice shall, by order, direct the officer to stay all proceedings on the same. Such officer shall, upon payment of his fees for services rendered on the execution, thereupon relinquish all property levied upon, and deliver the same to the judgment debtor, together with all moneys collected from sales or otherwise. If his fees be not paid, the officer may retain so much of the property, or proceeds thereof, as may be necessary to pay the same.

SEC. 631. The party appealing shall furnish to the district court the papers mentioned in section 629 of this act, certified by the justice to be correct.

SEC. 632. Costs shall be allowed to the prevailing party in a justice's court, as follows:

1st. To the plaintiff ten per cent. on the amount of the money or the value of the property recovered, if the action was litigated; five per cent. if the action was not litigated;
2d. To the defendant ten per cent. on the amount, or the value of the property claimed by the plaintiff in his complaint.

SEC. 633. In addition to the costs, as allowed in the last section, the prevailing party shall be allowed his money disbursements in the action.

SEC. 634. Justices of the peace shall receive from the sheriff or constables of their county all moneys collected on any process or order issued by their courts respectively, and all moneys paid to them in their official capa-

city, and shall pay the same over to the parties entitled or authorized to receive them, without delay. For a violation of this section they may be removed from their office, and shall be deemed guilty of a misdemeanor.

SEC. 635. Justices of the peace may in all cases require a deposit of money, or an undertaking, as security for costs of court, before issuing a summons.

SEC. 636. The provisions of sections 521, 522, 525, 527, 528, 529, 533, and 534, shall be applicable to justices' courts and actions therein.

Miscellaneous Provisions.

SEC. 637. The supreme court may make rules not inconsistent with the laws of the Territory for its own government and the government of the district courts, but such rules shall not be in force until thirty days after their adoption and publication.

SEC. 638. If an action be brought against a sheriff for an act done by virtue of his office, and he give written notice thereof to the sureties on any bond of indemnity received by him, the judgment recovered therein shall be conclusive evidence of his right to recover against such sureties; and the court or judge in vacation may, on motion, upon notice of five days, order judgment to be entered up against them for the amount so recovered, including costs.

SEC. 639. Whenever a summons or other process is served upon a party who is unable to read, or who does not understand the English language, it shall be the duty of the officer making the service to explain to such party the nature of the summons or other process.

SEC. 640. Words used in this act in the present tense shall be deemed to include the future as well as the present; words used in the singular number shall be deemed to include the plural, and the plural the singular; writing shall be deemed to include printing or printed paper; oath to include affirmation or declaration; signature or subscription, to include mark when the person cannot write, his name being written near it, and witnessed by a person who writes his own name as a witness.

CHAPTER XLIX.

Of License Tax.

SEC. 1. There shall be collected a quarter yearly license tax from all persons and corporations engaged in the business, trade, dealing, or occupations in this chapter named, as follows: Every person who may deal in goods, wares, and merchandise, except the agricultural productions of this Territory, when vended by the producers thereof, and except such as are sold by auctioneers or commission merchants under license or permission according to law, where their sales amount in the average to ten thousand

dollars or more per quarter year, a quarter yearly license tax of forty dollars; when such sales shall so average less than ten and more than five thousand dollars per quarter, a quarter yearly license tax of thirty dollars; when such sales shall so average less than five and more than two thousand dollars per quarter, a quarter yearly license tax of twenty dollars; and when such sales shall so average less than two thousand dollars per quarter, a quarter yearly license tax of eight dollars per quarter.

SEC. 2. Every person who shall sell or vend any wines or distilled liquors, butcher's meat, drugs and medicines, and who shall keep horses or carriages for rent or hire, when their business or sales amount to more than an average of five thousand dollars per quarter, shall pay a quarterly license tax of twenty dollars; when such business or sales are less than five thousand dollars per quarter, a quarterly license tax of eight dollars.

SEC. 3. All tavern or inn-keepers, all keepers of restaurants or saloons, all keepers of eating-houses or coffee-houses, and all other persons who may sell or dispose of any spirituous or malt liquors or wines in less quantities than one quart, shall pay a license tax of thirty dollars per quarter, and all eating-houses not selling or disposing of any liquors except malt liquors, shall pay a quarterly license tax of ten dollars.

SEC. 4. Every travelling merchant, hawker, or pedlar, who shall carry a pack, and vend wares, goods, or merchandize of any kind, shall pay for a license therefor five dollars per month; and every such travelling merchant, hawker, or pedlar, who shall use a wagon, or drive or cause to be driven a train for such purposes, or for the purpose of vending wines or spirituous liquors, shall pay for a license therefor ten dollars per month: Provided, that nothing in this section contained shall be construed to apply to the productions of this Territory, when such productions are sold or vended by the producer thereof.

SEC. 5. Each and every insurance company incorporated under the laws of any other State or Territory, shall pay an annual tax of two hundred dollars to the treasurer of the county in which their business office is situated, and take his receipt therefor, specifying the kind of business to be done, and which shall be a sufficient license: Provided, that no license under the provisions of this section shall be issued for less than one year.

SEC. 6. Every private banker, broker, dealer in exchange, stocks, gold dust, silver bullion, or other similar occupations, shall each pay a quarterly tax of twenty dollars.

SEC. 7. Each proprietor or keeper of a billiard table, not kept exclusively for the use of the owner and his family, for each table, thirty dollars per quarter; for a nine or ten-pin or bowling-alley, fifteen dollars per quarter.

SEC. 8. Every manager or lessee of a theatre, every serenade or concert singer, every exhibition of any caravan, menagerie, or collection of animals for pay; every circus, rope performer, wire dancer, or sleight-of-hand exhibitor, shall pay in advance such amount for license therefor for each day of such performance or exhibition, as the county treasurer shall fix and determine upon: Provided, that the amount so fixed shall not be more than twenty nor less than five dollars for any one day.

SEC. 9. No license granted under the provisions of this chapter shall be construed to exempt the capital stock or property used or invested in such business by the person paying such license tax, from taxation under any other provision of law.

SEC. 10. All moneys for license under the preceding provisions of this chapter shall be paid to the county treasurer of the county in which such business is proposed to be carried on, or the business office or place where any such business is located, before any such person shall commence to do any such business as is mentioned in any of the preceding nine sections; and the applicant at the time of paying such money shall deliver to such county treasurer a written statement of the business, the place where such business is to be carried on, and when necessary the estimated amount per quarter or otherwise of such business; and when such estimate is necessary to be made under the provisions of this chapter, such applicant shall in every instance make and subscribe an affidavit that he verily believes the amount of business to be done by the business establishment, or branch thereof, within the next succeeding three months, or longer time if license be required for a longer time, not exceeding one year, will not exceed the estimate under which he applies for license; and in all cases where an under estimate has been made, the party having made such under estimate shall be required to pay the amount necessary to make up such deficiency before a new license shall issue, or such county treasurer may recover such deficiency by action in his name of office.

SEC. 11. Licenses provided for in this chapter may be granted for a longer time than one quarter, and not exceeding one year, at the option of the applicant, he paying therefor the quarterly rates hereby established for such longer time: Provided, that no such licenses shall be granted for any fractional part of a quarter. A quarter as used in this chapter shall be construed to mean three calendar months.

SEC. 12. If any person, obtaining a license for any business mentioned in this chapter, shall connect therewith or transact any other business for which a license should be first obtained, he shall be liable to a penalty of double the amount required to be paid for the license which he should so have obtained before commencing such other business, and all costs of suit, to be recovered by action by the county treasurer, in his name of office; and all persons who shall commence or transact any business mentioned in this chapter, without first obtaining a license therefor, shall forfeit double the amount of such license tax for one quarter and all costs of suit, to be recovered by the county treasurer in like manner.

SEC. 13. When application is made for license as hereinbefore provided, and the amount thereof paid to the county treasurer, he shall give a receipt therefor, specifying the kind of business, the place where the same is to be transacted, and the time when such business will transpire under such receipt; and such receipt shall be deemed a sufficient license under the provisions of this chapter. The county treasurer shall keep in his office a duplicate copy of such receipt, and all moneys paid to the county treasurer or recovered by him as penalties or forfeitures under the provisions of this chapter, shall be by him applied, and paid agreeably to the provisions of law.

SEC. 14. In case of the absence or non-residence in the proper county of

any principal obtaining license under the provisions of this chapter—or, if such absentee or non-resident shall transact any business for which such license is required, without first obtaining the same—the person or agent acting for him therein shall be deemed the principal for all the purposes of this chapter, and be personally liable, in the same manner and to the same extent as such principal would be were he present or resided within such county.

SEC. 15. Whenever any person violates the provisions of this chapter for the space of five days, by trading without a license, it shall be the duty of the probate clerk to issue such license under the direction of the probate judge, and place the same in the hands of the sheriff of the county in which the license is issued—that such sheriff shall thereupon collect the same; and, for that purpose, may seize and sell any property real or personal belonging to such trader, in the same manner as if the same had been seized on execution issued out of the district court.

SEC. 16. The said clerk shall take the receipt of said sheriff for all licenses delivered to him and of the amount thereof, and shall likewise keep a record of the same in his office for public inspection; and the said sheriff shall keep an account of the money paid to the county treasurer and collected by him on such licenses.

SEC. 17. The said clerk shall receive a fee of three dollars for issuing the license referred to in the two preceding sections, and the sheriff shall receive fifteen per cent., together with the same fees for travelling as on execution, for the collection of all such moneys recovered by him on such licenses—and which sums for the fees of such clerk and sheriff shall be collected out of such delinquent trader, in addition to the sum named in and charged for such license.

CHAPTER L.

Of the Registry and Government of Mines and Mineral Deposits.

SEC. 1. All mining rights on the public lands of the United States, as well as rights acquired by discovery on the lands of private individuals, are possessory in their character only, and such possessory rights shall be limited, regulated, and governed as hereinafter provided.

TITLE ONE.

General Provisions relating to the Registry of Mines, Mining Rights, and Conveyances of the same.

SEC. 2. The judges of the probate court in their respective counties shall have jurisdiction over the registry and denouncement of all mines and all mineral and auxiliary lands, and the disputes and questions of whatsoever nature between all adverse claimants to mines or mineral, and auxiliary lands, which he shall hear and determine in a summary manner according to the rules of practice as prescribed for the district court in civil cases, and

all proceedings and records therein shall be entitled "In the Probate Court.—Judicature of Mines."

SEC. 3. The clerks of the probate court shall be *ex-officio* recorders of mines and all mineral and auxiliary lands in their respective counties.

SEC. 4. The county commissioners of each county shall, at the expense of the county, provide a suitable office for the clerk of the probate court at the seat of justice of his county, which shall be called the recorder's office, in which he shall keep the books and papers of his office; they shall also provide rooms and cases for the preservation of mineralogical specimens from each mine recorded, to be properly numbered, marked, and registered by him, with the time when and the locality whence taken; and he shall also preserve in said room all rocks, fossils, earths, minerals, plants, and other matters that may be useful or interesting for scientific, legal, or practical purposes.

SEC. 5. He shall provide three books of record, the expense of which shall be allowed by the county commissioners, and paid out of the funds originating from the tax on mines, which he shall respectively mark as "Books of Mining Record," "A," "B," and "C," which shall be kept in his office, and open to the inspection of the public at all times.

SEC. 6. The recorder of mines shall collect and record in record-book A, all registries, denouncements, and claims of mines, whether on public lands or private grants, by individuals or companies, that were made prior to the passage of this chapter, and make complete indices of the same, and keep them for the inspection of the public.

SEC. 7. He shall record all first or preliminary registries and denouncements of mines, made after the passage of this chapter in record book B, and all second registries after the sinking of the shaft and complying with the law as hereinafter provided, in record-book C, which shall be alike kept for public inspection.

SEC. 8. The recorder of mines shall keep a seal of office, to be provided by the county commissioners of each county, and affix the same to all official documents.

SEC. 9. He shall be allowed, and receive from the parties interested, the following fees, and when the number of words contained in the papers to be recorded shall exceed one folio, he shall receive in addition twenty cents per folio. For each record of former claim in book A, $1. For each preliminary or first registry of a mine or auxiliary mining land, in book B, $1. For each succeeding claim on the same deposit, $1. For final record after sinking shaft and certificate, in book C, $2. For final record of each additional claim of the same party on the same deposit, in book C, $1. For recording each separate auxiliary tract, $1. For recording articles of co-partnership, $2.50. For recording charters of mining companies, $2. For recording notice required by section 25–1, $1. For recording each conveyance, $1. For any subsequent copy of the foregoing, one-half of the above rates; and for all fees in litigated mining cases he shall receive the same compensation as is allowed to clerks of the district courts in civil cases for like services; and for all services and fees not provided for in this chapter, his fees shall be fixed by the judge of probate.

SEC. 10. The charters of all mining companies and their officers, where they keep their office, and where their mines are situated, with a description of their machinery, and a list of their property, shall be furnished by them, and recorded in record-book C of the recorder, and they may procure certificates thereof, that shall at all times be good evidence in all courts of justice.

SEC. 11. The co-partnership agreements of all mining partners shall be recorded in the same manner, and certificates thereof shall have the like effect; and the company or co-partnership failing to furnish the charter or agreement required to be recorded by this chapter, after due notice by the recorder, shall be deemed to stand in contempt of the law, and punished by the probate judge by fine in his discretion not to exceed one hundred dollars.

SEC. 12. All mining claims shall be registered in the real names of the parties, and by persons legally authorized to make such registry either in person or by power of attorney, to be exhibited to and filed and recorded with the recorder of mines, or with the recorder of the mining district as hereinafter provided; and no claims shall be registered in the names of fictitious persons; and any person violating the provisions of this section shall forfeit all right and interest in the claim so registered, and the same shall be subject to registry and denouncement by another, on the same terms as newly-discovered veins.

SEC. 13. The property of all mines and mineral lands in descents and conveyances of property to heirs shall be considered and regarded as real estate.

SEC. 14. All sales of mining claims or mineral lands, or any interest in the same, shall be registered with the recorder, by deed to be executed as provided for conveyances of real estate, and in a book to be kept by him for that purpose, within three months from the date of the sale of the same, or shall be declared forfeited and subject to denouncement and registry by another; and such conveyances when so registered shall be subject to the same rules which govern conveyances of real estate, and shall have the same effect in the courts.

TITLE TWO.

Extent of Mining Rights, and Mode of acquiring and retaining Titles thereto.

SEC. 15. Every mining claim or pertenencia is declared to consist of a superficial area of two hundred yards square, to be measured so as to include the principal vein or mineral deposits, always having reference to and following the dip of the vein so far as it can or may be worked, with all the earth and mineral therein. But any mining district organized in accordance with the provisions of this chapter, may prescribe the dimensions of said mining claim or pertenencia for such district, provided that in no case the dimensions so prescribed shall exceed the number of yards allowed by this section; and further provided, that no such mining district shall diminish the extent of the Territorial claim to one pertenencia, as defined in this section.

SEC. 16. Any person discovering or opening a vein or other mineral deposit in this Territory, not actually worked or legally owned by other parties, or registered in accordance with this chapter, shall, by properly denouncing and registering the same, be entitled to claim and hold a possessory right to a tract of land to the extent of two mining claims or pertenencias, including the said vein or mineral deposit, and conforming as nearly as possible to the general direction thereof, each to be measured two hundred yards long by two hundred yards wide, the direction of the lines to be determined by the person claiming.

SEC. 17. If two or more persons are associated, and have formed a company for the exploration and working of mines, and one or several shall make discoveries of mineral deposits in consequence thereof, said company so engaged in exploration shall be entitled to denounce and register one discovery claim only upon each lode.

SEC. 18. It shall be lawful for the claimants of a mine or mineral lands to locate and take possession of public lands for a mill-site and other necessary works connected therewith, which shall not exceed one quarter section, containing a stream or other water suitable for the purpose. They shall have a right to place a dam or other obstructions on such stream, and to divert its waters for the above uses and purposes. They shall, within the time and in the manner prescribed in this chapter for the registration and denouncement of mines, proceed to denounce and register the same with the clerk of the probate court, and they shall be known as auxiliary lands. And if within three years from the day their notice of claim is so recorded, they shall expend in fitting the same for a mill, or in placing a mill or reduction works thereon, the sum of one hundred dollars, they may cause the record of such work to be made, and proceedings for confirming their title to be instituted as provided in section twenty-nine of this chapter, with like effect, and receive a certificate of title as therein provided, conforming as nearly as they can to the requirements of that section. Instead of the work required by section thirty-two of this chapter, they shall use the machinery or other works erected upon said land for mining purposes at least thirty days in each year. Such claims shall be subject to all the provisions of this chapter which are applicable to mining rights, and may be abandoned and re-located. All rights to auxiliary lands acquired under the laws of any mining district before this act takes effect shall be valid, and owners of the same, upon complying with the provisions of this section, may take the like proceedings to confirm their titles with a like effect.

SEC. 19. It shall be the duty of all claimants of mining claims, mineral lands, and auxiliary tracts, to at once define the extent and boundary of them as nearly as possible, by good substantial monuments or other conspicuous marks in the presence of the recorder of the mining district, or of some witness who shall prove to the satisfaction of the recorder that the same has been done, and to post up a public notice of their claim at the opening of the principal vein, and to have them properly registered and recorded within three months from the time of first claiming them at the office of the mining district recorder, according to the provisions of this chapter. Such record shall give a faithful description of the veins, mineral deposits, and tracts of land, the character and bearing of the veins or deposits, and their connection with natural monuments or conspicuous objects in the vicinity.

SEC. 20. No person shall change his original monuments or boundaries of

mineral or other lands, but if a subsequent investigation makes this convenient or necessary, and it can be done without prejudice to other parties, then such change shall take place by the sanction of the judge of the probate court, provided they are properly recorded and the new boundaries and monuments fixed at once when the original ones are removed.

SEC. 21. All minerals, woods, waters, earths, and vegetation found within the boundaries of any tract of land registered and claimed for mining, shall be exclusively used by him or them who are legally entitled to the possession of the land wherein or whereon they are situated so long as they are used for mining purposes only, provided that no one shall have the right to prevent transient persons from using the waters along the public highways, where they were provided by nature in natural tanks, springs, streams, or otherwise, nor from making such equitable disposition of the waters as the Legislature shall prescribe.

SEC. 22. No person shall have the right to impede or inconvenience travelling by fencing up the public roads, filling them up with rubbish, or undermining them so as to endanger their safety; neither shall any one change their established direction without sanction of the proper authorities.

SEC. 23. Whenever two or more persons or parties explore and prospect one and the same vein, and at or about the same time, but at different places, and without knowledge of each other, then he or they who shall prove first occupancy shall have the right of first location, taking the principal point of excavation as the centre of their claim or claims on each side along the general direction of such vein or deposit. The other parties shall proceed by the same laws after the others have fixed their boundaries. Should there be left vacant ground between the different parties, then it shall be at the option of the first discoverers so to change their boundaries as shall best suit them, and have them recorded accordingly. Any other parties shall locate in the order of the time of their arrival on the vein or mineral deposit.

SEC. 24. Whenever two or more parties shall select the same mine or mineral deposit for exploration, and the parties first on the ground, knowing the other parties to be at work, shall fail to give warning, either verbally or in writing, of their prior claim on such vein or deposit, then that portion of the mine situated between the main excavations of the two parties shall be equally divided between them, irrespective of the number of members each company may have: *Provided*, that the intervening portions shall not exceed the quantity of land allowed by the provisions of this chapter.

SEC. 25. The laws and proceedings of all mining districts established in this Territory for the denouncement, registration, and regulation of mines, mining claims, mineral lands and auxiliary lands, prior to the day this act takes effect, are hereby legalized and declared to be as valid and binding in all courts of law as if enacted by this Legislative Assembly, to the extent and under the conditions and restrictions herein contained.

1. All rights, claims, and titles to any veins, mineral lands, or mineral deposits, and auxiliary lands, acquired before this chapter takes effect, under, by virtue of, and in conformity to the laws of said mining districts, are hereby declared to be valid and legal, and shall be respected and enforced in all courts of this Territory, when sustained by the evidence herein pro-

vided; but no amount of work done thereon shall be construed to give a perpetual title thereto, but shall give such title only and such rights and privileges as is provided in section twenty-nine of this chapter, and no person who was at the time of the location of his claim an inhabitant of this Territory shall forfeit his claim because he was not a resident also of the mining district in which his said claim was located. And no such right, claim, or title shall be considered as abandoned provided the claimant shall within six months from the day this chapter takes effect file with the clerk of the probate court of the county in which his claim is situated a brief description of the same, giving the name of the district in which the lode is situated, and of the lode or lodes, and the extent of his claim thereon, with a declaration that he intends to retain and work the same according to law, unless such claim has been forfeited, and subject to re-location under the laws of such mining district before this act takes effect.

2. All records and all papers required by the laws of said mining districts to be deposited with the recorders of said districts for record, shall be received as evidence of their contents in all courts of this Territory, and shall not be rejected for any defects in their form, when their contents may be understood, but shall be valid to the extent provided by said mining laws, except as hereinbefore restricted: *Provided*, that such records and papers are deposited with or recorded by the clerk of the probate court of the county in which said mining district is located, and within three months from the time this chapter takes effect; and if said records or papers are lost or mutilated, or if such recorder of a mining district shall neglect or refuse to deposit the same as aforesaid, an affidavit of their contents made by any person interested therein, or certified or sworn copies thereof may be so recorded, and shall have the like effect.

3. All conveyances of mines, mining rights, mineral and auxiliary lands made prior to the time this chapter takes effect, shall be valid and binding to pass the title of the grantor thereof, although defective in form and execution, if their contents can be understood, and as such shall be received and regarded in all courts of this Territory: *Provided*, that such conveyances shall be deposited with or recorded by the clerk of the probate court of the county where said mines are situated, within three months from the time this chapter takes effect, and if lost or mutilated, copies or affidavits of their contents, executed as aforesaid, may be recorded as provided above.

SEC. 26. Every recorder, register, clerk, or other recording officer of every such mining district, or who has at any time acted as such recording officer, within three months after this chapter takes effect, shall deposit with the clerk of the probate court of the county in which said district or greater part thereof is situated, all records which he has so kept, and all papers deposited in his hands for record, and papers so made or deposited with his predecessors in said office, which are in his hands as aforesaid, or he shall so deposit certified copies of the same. And such records and other papers shall be securely kept by such clerk open in office hours to public inspection, and copies of the same duly certified by him shall be received in all courts of justice, and have the same effect as the originals. And any such recorder, register, or other recording officer of each mining district who shall neglect or refuse to comply with the provisions of this section shall be liable in damages to the party injured thereby, and shall be liable to be punished by the judge of probate of the county in which said mining district, or the greater part thereof, is situated, for contempt, by fine not exceeding five thousand dollars, and imprisoned not more than one year, and shall be incapable of holding any such office and mining claim.

SEC. 27. Mining districts now existing may be continued, or new mining districts may be established in the manner and for the purposes hereinafter provided.

1. The recorder of every mining district now existing shall, at the same time he deposits the records of said districts, with the clerk of the probate court, as the last preceding section requires, take an oath before the judge of said court that he will faithfully perform the duties of his office until another recorder shall be elected and qualified in his place, which oath shall be recorded by the clerk of the probate court. He shall record in a book to be kept by him for that purpose all notices of claims or rights to veins, mineral deposits, mineral lands, and auxiliary lands, which may be left with him to be recorded, and shall note on all papers which may be received by him to be recorded, the time when they were so received by him, and they shall be considered as recorded from that time. He shall, when requested by any such claimant, go with him to his claim and see that the same is measured by metes and bounds, and marked by substantial monuments on the surface of the earth, and shall make a record of the same, and of the time when it was done, and certify it to be correct, or shall make a record and certificate of the same on the evidence of a credible witness, who was present when the same was done, and is cognizant of the facts, and whose name shall be entered on the record. He shall, when requested by any such claimant, go with him to his claim, and examine any shaft that may be sunk by him, or tunnels that may be opened to the same, and make measurements of the same, and a record and certificate as aforesaid; and he shall in like manner examine, measure, or estimate, and make a record and certificate of any work which is required by law to be done by a claimant. And the same recording officer shall quarterly file with the clerk of the probate court of the county in which said district is located, a copy by him certified of all records made by him for the three months last preceding, which shall be duly recorded by said clerk, and a copy of said record duly certified by him shall be evidence of its contents in all courts of this Territory. And such recording officer shall be liable to all the penalties provided in the preceding section, if he shall neglect or refuse to perform any of the acts and duties required of him by this section, but shall not be required to perform any such service until his fees for the same, to be fixed by the mining districts, are paid him, if he requests it. And if any paper deposited with him for record is required to be recorded by the clerk of the probate court, he shall, at the time said paper is so deposited with him, take and receive the fee fixed by law for recording such paper by said clerk, and pay the said clerk said fee when he deposits said paper with him to be recorded as aforesaid. All such mining districts may make laws not inconsistent with the laws of the Territory, may elect officers for the government of such districts, and fix their compensation; but all such acts and proceedings shall be recorded, and all records and papers thereof filed with the clerk of the probate court as aforesaid.

2. Any number of persons not less than twelve, owning mining claims in any mining district, or in any contiguous mining districts, or who have discovered and may wish to denounce a mine or mineral lands, not within the limits of any established mining district, may proceed to make a new mining district at a meeting of persons holding claims in such district so to be established, and of claimants in any districts to be divided or to be included therein. They shall cause a notice in writing, and specifying the limits of said contemplated district, signed by them, to be posted in three

conspicuous places in said district, and if any part of an established district is to be included therein, by leaving a copy of said notice with the recorder of said district at least ten days before the day of said meeting. At said meeting all persons holding claims aforesaid may vote and may determine by a majority vote of those present whether said new district shall be established, and its limits, but within the boundaries named in the notice for said meeting, and thereupon the persons holding claims in such newly established district shall proceed to select a name, and make laws therefor, and elect a recorder, who shall be qualified as aforesaid, who shall perform all the duties and be subject to all the liabilities provided in this chapter for such officers, and shall file with the clerk of the probate court as aforesaid a record of the proceedings of this and all subsequent meetings at the time and in the manner herein provided.

SEC. 28. It shall be the duty of all claimants of mineral tracts to sink at least one shaft of thirty feet in depth or to run a tunnel of fifty feet in length, in the body of the vein or in the adjoining rock, so as to test the vein from the surface, for the purpose of ascertaining the character and capacity of such mineral deposit, within the space of one year from the day of first taking possession thereof, and they shall notify the recorder of the mining district that said shaft or other work is completed, and that they intend working the vein or mineral deposit. And the recorder shall examine said work in person, and make a record and certificate of the result of such examination, which shall contain a statement of the condition and quality of the vein or mineral deposit, the amount of labor performed, and a general view of the results obtained. Said report shall be accompanied by three specimens taken from different parts of the work, which said specimens, with a copy of the record so made by him, shall be filed by him within the time required by this chapter in the office of the clerk of the probate court, and said clerk shall make a record of the same. Such specimens shall be numbered and described by him, and be preserved for the use of the mineralogical professorship of the University of Arizona.

SEC. 29. The judge of the probate court at any time within thirty days after the record made by the clerk of said court, as provided in the preceding section, upon complaint in writing made to him by such claimants, describing fully their claims, stating the labor performed by them, and the certificate thereof, and that the registration of the same has been made as required by law, and requesting that their title thereto may be confirmed, shall cause a summons, under the seal of his court, to be issued, requiring all persons interested to appear at a day named therein and which shall not be less than sixty days from the day the same was issued, and show cause why the title of such complainants and claimants should not be confirmed, a copy of which complaint and summons, duly attested by the clerk of the probate court, shall be published twice in the Territorial newspaper, and be kept posted in the office of said clerk from the day of issuing the same to the return day thereof; and if no person shall appear on such return day to contest the right of the claimants to such claims, the judge of probate shall examine all the records filed in the office of his clerk relating to such claims, and if he finds that the said claimants have in all respects complied with the provisions of this chapter, he shall make a decree in substance that the complainants, having complied with the laws of this Territory relating to the denouncement and registration of mines, have acquired a perfect title to their claims (describing the same), until the 1st day of January, A.D. 1868, and for ever after unless abandoned by them.

And the said clerk shall give the said claimant a copy of such decree, under the seal of the court, which shall be conclusive evidence of title in any proceedings relating to such claims, until they are abandoned. And unless the persons adversely interested, and contesting the title of the complainants, shall appear on the day named in said complaint and proceed as hereinafter provided, they shall be for ever barred from contesting the title of said complainants to such claims. And if the contestants shall so appear, they shall on that day or some day to be fixed by said judge, proceed to file an answer, setting forth their claim and case, and the proceedings shall then be conducted in conformity to the provisions of this chapter and the code of civil practice. And whenever a final decree is made thereon, determining the title to said claim or mine, by said judge, or by any other court on appeal, the said judge shall cause a record to be made in the office of his clerk of such decree, and a certified copy thereof may be made as aforesaid, with the like effect. And any claimants of mineral lands who before this chapter takes effect have in any way, or under any law, acquired a title to such mineral lands, after filing with the clerk of the court their evidence of title and description of claim as required by this chapter, may cause an examination of the shaft sunk by them or other work done by them, to be made as aforesaid, and take the like proceedings for the confirmation of their titles, with the same effect: Provided, this section shall not apply except when the complainants are in possession of such mine or mining rights, claiming title thereto.

SEC. 30. By reason of the Indian wars and unsettled condition of the country, the time within which a shaft is required to be sunk, or other labor performed on a claim, shall not commence until two years from the day this act takes effect, and all the provisions of this chapter relating thereto are suspended for that time; but any claimant may sink a shaft or do such other labor, and at any time after the record of their claims with the probate court, and thereupon institute proceedings to confirm their titles, and be entitled to all the rights and privileges provided for in this chapter.

SEC. 31. No single person or company shall be compelled to sink shafts or make other improvements on more than one of the tracts of land claimed by him or them for the same vein or mineral deposit; and any number of claimants on the same vein or mineral deposit, who may unite for said purpose, shall be allowed to concentrate labor, capital, and energy, to any one single point, which to him or them shall be best suited to ascertain to the best advantage the general character, quality, and capacity of that particular vein or mineral deposit, and may take the like proceedings to confirm their titles.

SEC. 32. After the work required by section 28 of this chapter has been performed, and the record thereof made as therein provided, two years shall be allowed the claimants of mineral lands to develop the same, and procure machinery and provide for working the same, and during that time the same shall not be considered abandoned, although no work be done thereon: *Provided*, that in such event they shall annually, and before the first day of June in each year, file with the clerk of the probate court an affidavit signed by them that they have not abandoned such claims, but intend in good faith to work them; and said term of two years shall not commence until the first day of January, A.D. 1868. And after the expiration of said term of two years it shall be obligatory upon claimants to such

mineral land to hold actual possession of them, and work the vein, which obligation shall be considered as complied with by doing at least thirty days' work thereon in each year; but if such claimants are prevented from working such vein by the hostility of Indians, or other good cause, rendering said working difficult or dangerous, they may by authority of the judge of probate first obtained be relieved from performing labor thereon from time to time, but for not more than one year at any one time during the continuance of such cause.

SEC. 33. Any person who may discover a mineral vein or deposit as aforesaid, which is not included within a mining district, or which may be in a mining district in which there is no legally authorized recorder, may acquire title thereto, and to auxiliary lands, by giving notice as aforesaid, and recording the same with the clerk of the probate court of the county in which the same is situated, and may take the same proceedings with the like effect with the clerk of the probate court that are required to be taken with the recorder of a mining district.

SEC. 34. Discoverers of mines on lands in the legal ownership or possession of others, and not public lands, before doing the work of sinking the shaft required by section 28 of this chapter, shall pay to such parties such compensation for the use of the same as may be awarded by the judge of probate, upon complaint of either party, or shall give bond to such parties for payment of the same, and sureties to be approved by said judge; and whenever it becomes necessary or advantageous to construct tunnels for the purpose of drainage, ventilation, or the better hauling of ores or other subterraneous products or mining materials, it shall be lawful for any party or parties to construct such tunnel or drift through all private and public property: *Provided*, that all damages arising from such subterranean works to the other parties, to be determined as provided above, shall be paid by the parties for whose benefit such tunnelling is done, to be paid before said work is commenced, or security given to the satisfaction of the judge of probate for payment of the same; but no damages shall be paid on public lands when claims for such lands shall be set up after such tunnel shall have been projected or actually in process of construction: *Provided*, that the lapse of time between projection and actual work shall not exceed ninety days, and that the tunnelling parties give timely notice of their project to any new claimant of the so affected ground.

SEC. 35. Whenever such tunnel as mentioned in the preceding section shall intersect or traverse mineral deposits, or run along lodes claimed and held by other parties, then it shall be at the option of the owners of such other mineral deposits either to pay one-half of the expense of excavation for the distance that such tunnel runs through their mineral deposits, and secure the whole of the ores excavated, or to divide the ores with the tunnelling parties, the latter paying all expenses of excavation; or it shall be optional with either party to abandon all claim to the ores excavated.

SEC. 36. If in the construction of such subterranean works new veins or deposits are encountered in ground not claimed or owned by other parties, they shall become the property of the party for whom such tunnel is constructed, and shall be denounced and registered as is required of new mines, and shall be governed by the same laws as are prescribed in this chapter.

TITLE THREE.

Of the Abandonment and Re-location of Mines and Mining Rights.

SEC. 37. Any claimant or claimants not complying with any of the foregoing conditions and obligations, shall forfeit all right to any such recorded or unrecorded claims to mineral and auxiliary tracts, and it shall not be lawful for him or them to register such claims anew within a period of three years after such forfeiture. All such tracts shall be free for working and registry to any but those excepted in this section.

SEC. 38. All veins and mineral deposits situated on public lands, which have not been worked and occupied from the time of the acquisition of the Territory by the United States up to the time of the passage of this chapter, except as herein provided, shall be considered as abandoned and subject to registry and denouncement.

SEC. 39. All veins and mineral deposits that have been or may be abandoned hereafter, shall in all cases and respects be governed by the laws regulating the opening and working of new veins and deposits, as prescribed in this chapter.

SEC. 40. Whenever any mine, vein, or mineral deposit shall have been abandoned or forfeited in accordance with the provisions of this chapter, and registered anew by other parties, it shall be obligatory upon such parties to give the former owners warning thereof, so as to remove from the tract within the space of three months, anything he or they may claim valuable or useful. Such warning shall be given in the nearest newspaper published in the Territory, and by posting it at three of the most conspicuous places in the county where the mine is situated. Three months after the expiration of such warning any and all buildings, furnaces, arrastras, metals, and every other species of property which may still remain on the ground of such mine, vein, or mineral deposit, shall become the undisputed property of the new claimant, without compensation of any kind to any person whatever.

SEC. 41. Any person taking possession of, or entering upon a mining claim or auxiliary lands, registered according to the provisions of this chapter, and before it is abandoned, shall be ousted therefrom in a summary manner by the order of the probate judge, and the malfeasor shall be adjudged to pay all damages and costs consequent thereon.

TITLE FOUR.

Of Proceedings in Litigated Mining Cases.

SEC. 42. All the proceedings in all the causes relating to mines in the courts of this Territory shall be considered equitable proceedings, and be conducted according to the rules of practice prescribed in equity cases, and the judge shall hear and determine all questions on their merits and according to the equitable rights of the parties.

SEC. 43. In all litigated cases relative to mines, the probate judge shall take the testimony or cause the testimony to be taken down in writing by

the clerk, or by a commissioner appointed by him for that purpose, and certified and filed by him as a part of the record in the case, and whenever a witness is beyond the limits of the Territory his testimony may be taken in like manner as in cases pending in the district court.

SEC. 44. An appeal shall be allowed in all mining cases from the judgment or decree of the probate court to the district court, if taken within ten days after said judgment or decree, the appellant first giving bond with two sufficient securities to the adverse party in a sum sufficient to cover all costs and damages, in the discretion of the court, conditioned that he will prosecute the appeal without delay, and with effect, and pay all damages resulting from the same; and if the appeal is taken after the day of trial and final judgment, then notice thereof shall be given in writing to the adverse party, and on or before the first day of the term of the district court next thereafter, a transcript of all the papers and proceedings, and the testimony, and approved report of the commissioners taken in the case, shall be certified by the clerk and filed in the district court, at the expense of the appellant, and the cause so appealed shall be tried at the next term thereafter, if taken five days before the commencement of said term; and if not taken within that time, then it shall be tried at the next succeeding term.

SEC. 45. All cases taken by appeal to the district court shall be tried on their merits, on the record and testimony as certified to the district court, and no new testimony shall be introduced unless it is shown in the affidavit of the party applying, to the satisfaction of the court, that new, important, or material testimony has been discovered since the trial before the probate court, or could not be procured in season to be used at said trial, and which may change the judgment in the cause, and in that event said new testimony shall be taken in writing by the judge or clerk of said district court, or by a commissioner, and become part of the record in the case.

SEC. 46. Writs of error may be taken out, and appeals allowed to the supreme court, in all mining cases brought by appeal or *certiorari* into the district court, on the same terms as are provided for by writs of error and appeals from the district courts to the supreme court.

SEC. 47. The district courts shall exercise a superintending control over the probate courts in all mining cases by writs of *mandamus*, prohibition, and injunction; and writs of *certiorari* shall issue in all cases to correct and revise their proceedings, in case of neglect or refusal to allow an appeal in accordance with the rules of practice prescribed for the government of the district courts.

SEC. 48. The probate judge in all litigated mining cases, when local knowledge is necessary, may at his own option, or at the request of either party, appoint a commission of three persons skilled in mining, to proceed to any mine or mineral land in question and examine the question in litigation, and make a report in writing under oath of all the facts and circumstances bearing upon the question and relevant thereto, and their report shall be rejected or approved in whole or in part by the probate judge, and if said report shall be approved it shall be certified, filed, and made a part of the record in the cause. The said commissioners shall receive five dollars per day each for their services while necessarily engaged in performing the duties of said commission, to be taxed as costs in the cause.

SEC. 49. All disputed lines, divisions, and demarcations between parties claiming mineral veins, deposits, or auxiliary lands, shall be determined by the judge of the probate court in a summary manner, according to the provisions of this chapter; and when he may judge it necessary, or is requested by either of the parties litigant, he shall appoint a commission as is provided in the forty-eighth section of this chapter, to examine and report upon said division lines or boundaries, and the same proceedings shall be had thereon as are provided for in said section.

SEC. 50. Whenever the members of a co-partnership or company, or tenants in common of mineral lands, cannot agree as to the working or management of the veins or mineral deposits therein, one or more of them may make complaint to the judge of probate of the county in which said lands are situated, setting forth the facts, who shall thereupon issue a summons to the other members of said co-partnership or company, or tenants in common interested therein, or cause such other notice to be given to them as he may think proper, requiring them to make answer thereto, and if upon a hearing on such complaint the judge is of opinion that the claim or claims of such persons are susceptible of partition, and it can be equitably made between them, and the parties cannot agree among themselves on making such partition, he shall appoint a commission as provided in section 48 of this chapter, who shall go upon the claims of such partnership, company, or tenants in common, if necessary, and segregate their claims, having in view the equities of the case and the customs and regulations of mines, and shall make report in writing to the judge of probate, who shall make his decree in accordance with said report, and which shall be conclusive between the parties unless an appeal be taken as provided in this chapter. Or whenever one or more of such partners or tenants in common in mineral lands, and owning not less than one-third of the full interest of such partnership on tenancy therein, shall desire to work their mine, and the other partners or tenants, after reasonable notice, shall neglect or refuse to unite in such working, they may make complaint to the judge of probate as aforesaid, and he shall proceed thereon as before provided in this section; and if upon a hearing of such complaint it appears to him that the complainants are able to work said mine, and that there is no good reason why the same should not be worked, he shall make a decree to that effect, and if the other partners do not appear, he may appoint an agent and receiver, who shall protect their rights, and see that the mine is properly worked, and shall receive their proportion of the profits; but such partners or tenants in common so authorized to work as aforesaid, shall conduct said work at their own expense, and shall not be authorized to bind such other persons to the payment of any indebtedness which they may incur in that behalf.

TITLE FIVE.

Of the Territorial Claim, and of Alluvial and Diluvial Deposits.

SEC. 51. It shall be the duty of persons who may discover and claim mining rights or mineral lands, at the same time that they may define the boundary of their claim or claims to any lode or mine as required by the provisions of this chapter, to lay off and define the boundaries of one pertenencia as required by the provisions of this chapter, adjoining their claim or claims, which shall be the property of the Territory of Arizona. And at the same time that they present their notice of claim or claims to be

recorded by the recorder of the mining district, they shall also present to such recorder the claim of said Territory. And if said discoverers and claimants shall neglect or refuse to present to such recorder the claim of said Territory as aforesaid, they shall for ever forfeit all claim to the mine or ledge so discovered by them. Any recording officer recording the claim or claims of such discoverers and claimants, when the claim of said Territory is not filed therewith as aforesaid, shall be subject to all the penalties provided in section 26 of this chapter. Such claim shall be recorded as provided in this chapter for like claims, but no work shall be required to be done thereon, nor shall it be considered to be abandoned so long as it is the property of the Territory; and if sold, the time within which the purchaser shall be required to work said claim shall commence from the day of sale, except when the time is suspended as before provided. Every clerk of the probate court, as soon as he records the said claim, shall send a copy of his record to the treasurer of the Territory, and no fees shall be charged by any recording officer in any matter relating to said claim. And the Territorial treasurer may at any time after six months from the day he receives such record as aforesaid, and at such time and place as in his opinion will be most for the interest of the Territory, cause such claim to be sold at auction to the highest bidder, but every such sale shall be at least twice advertised in the Territorial newspaper, and be held at his office, or the office of the clerk of the probate court, or recorder of the mining district of the county where the claim is situated. And the treasurer is authorized to make a deed of the same to the purchaser in the name of the Territory. And the amount received by him shall be added by him to any fund now or hereafter provided for the protection of the people of the Territory of Arizona against hostile Indians, and be expended as provided by law. And after all expenses incurred by the Territorial authorities for the purpose of destroying or bringing into subjection all hostile Indian tribes in this Territory are liquidated, then all remaining or accruing funds out of all or any sales of Territorial mining claims, shall be applied as a sinking fund for school purposes.

SEC. 52. The extraction of gold from alluvial and diluvial deposits, generally termed placer mining, shall not be considered mining proper, and shall not entitle persons occupied in it to the provisions of this chapter, nor shall any previous section of this chapter be so construed as to refer to the extraction of gold from the above-mentioned deposits.

CHAPTER LI.

Of Corporations for Mining Purposes.

SEC. 1. Corporations for mining purposes may be formed according to the provisions of this chapter; such corporations, and the members thereof, being subject to all the conditions and liabilities herein imposed, and to none others.

SEC. 2. Any three or more persons, who may desire to form a company for the purposes specified in the preceding section, may make, sign, and acknowledge, before some officer competent to take the acknowledgment

of deeds, and file in the office of the county recorder of the county in which the principal place of business of the company is intended to be located, and a duplicate thereof in the office of the secretary of Territory, a certificate in writing, in which shall be stated the corporate name of the company, the objects for which the company shall be formed, the amount of its capital stock, which shall not exceed four hundred thousand dollars, nor be less than ten thousand dollars, the time of its existence, not to exceed thirty years, the number of shares of which the stock shall consist, the number of trustees and their names who shall manage the concerns of the company for the first three months, and the names of the city or village and county in which the principal place of business of the company is to be located.

SEC. 3. A copy of any certificate of incorporation, filed in pursuance of this chapter, and certified by the county recorder of the county in which it is filed, or his deputy, or by the secretary of Territory, shall be received in all courts and places as presumptive evidence of the facts therein stated.

SEC. 4. When the certificate shall have been filed, the persons who shall have signed and acknowledged the same, and their successors, shall be a body politic and corporate, in fact and in name, by the name stated in the certificate, and by their corporate name have succession for the period limited, and power: First, to sue and be sued in any court; Second, to make and use a common seal, and alter the same at pleasure; Third, to purchase, hold, sell, and convey such real and personal estate as the purposes of the corporation shall require; Fourth, to appoint such officers, agents, and servants as the business of the corporation shall require; to define their powers, prescribe their duties, and fix their compensation; Fifth, to require of them such security as may be thought proper for the fulfilment of their duties, and to remove them at will, except that no trustee shall be removed from office unless by a vote of two-thirds of the whole number of trustees, or by a vote of a majority of the trustees, upon a written request signed by stockholders of two-thirds of the whole stock; Sixth, to make by-laws not inconsistent with the laws of this Territory for the organization of the company, the management of its property, the regulation of its affairs, the transfer of its stock, and for carrying on all kinds of business within the objects and purposes of the company.

SEC. 5. The corporate powers of the corporation shall be exercised by a board of not less than three trustees, who shall be stockholders in the company, and a majority of them citizens of the United States, and who shall, after the expiration of the term of the trustees first selected, be annually elected by the stockholders at such time and place, and upon such notice and in such mode as shall be directed by the by-laws of the company; but all elections shall be by ballot, and each stockholder, either in person or by proxy, shall be entitled to as many votes as he owns shares of stock; and the persons receiving the greatest number of votes shall be trustees. When any vacancy shall happen among the trustees by death, resignation, or otherwise, it shall be filled for the remainder of the year in such manner as may be provided by the by-laws of the company.

SEC. 6. If it should happen, at any time, that an election of trustees shall not be made on the day designated by the by-laws of the company, the corporation shall not for that reason be dissolved; but it shall be lawful on any other days to hold an election for trustees, in such manner as shall be provided for by the by-laws of the company; and all acts of the trustees

shall be valid and binding upon the company until their successors shall be elected.

SEC. 7. A majority of the whole number of trustees shall form a board for the transaction of business, and every decision of a majority of the persons duly assembled as a board, shall be binding as a corporate act.

SEC. 8. The first meeting of the trustees shall be called by a notice, signed by one or more of the persons named trustees in the certificate, setting forth the time and place of the meeting, which notice shall either be delivered personally to each trustee, or published at least ten days in some newspaper of the county in which is the principal place of business of the corporation; or if no newspaper be published in the county, then in some newspaper nearest thereto.

SEC. 9. The stock of the company shall be deemed personal estate except when conveyed according to the provisions of this code for the entailment of estates, and shall be transferable in such manner as shall be prescribed by the by-laws of the company; but no transfer shall be valid, except between the parties thereto, until the same shall have been so entered on the books of the company, as to show the names of the parties by and to whom transferred, the number and designation of the shares, and the date of the transfer.

SEC. 10. The trustees shall have power to call in and demand from the stockholders the sums by them subscribed, at such times and in such payments or instalments as they may deem proper. Notice of each assessment shall be given to the stockholders personally, or shall be published once a week for at least four weeks in some newspaper published at the place designated as the principal place of business of the corporation; or if none is published there, in some newspaper nearest to such place. If, after such notice has been given, any stockholder shall make default in the payment of the assessment upon the shares held by him, so many of such shares may be sold as will be necessary for the payment of the assessment on all the shares held by him. The sale of said shares shall be made as prescribed in the by-laws of the company: Provided, that no sale shall be made except at public auction to the highest bidder, after a notice of thirty days, published as above directed in this section; and that at such sale the person who will agree to pay the assessment so due, together with the expense of advertisement and the other expenses of sale for the smallest number of whole shares, shall be deemed the highest bidder; and provided further, that the time of sale of any shares owned by non-residents of this Territory shall not be less than six months after default or forfeiture.

SEC. 11. Whenever any stock is held by any person as executor, administrator, guardian, or trustee, he shall represent such stock at all meetings of the company, and may vote accordingly as a stockholder.

SEC. 12. Any stockholder may pledge his stock by a delivery of the certificates or other evidence of his interest, but may nevertheless represent the same at all meetings, and vote accordingly as a stockholder.

SEC. 13. It shall not be lawful for the trustees to make any dividend except from the surplus profits arising from the business of the corporation; nor to divide, withdraw, or in any way pay to the stockholders, or any of

them, any part of the capital stock of the company; nor to reduce the capital stock, unless in the manner prescribed in this chapter; and in case of any violation of the provisions of this section, the trustees, under whose administration the same may have happened, except those who may have caused their dissent therefrom to be entered at large on the minutes of the board of trustees at the time, or were not present when the same did happen, shall, in their individual and private capacities, be jointly and severally liable to the corporation and the creditors thereof, in the event of its dissolution, to the full amount so divided, withdrawn, paid out, or reduced: Provided, that this section shall not be construed to prevent a division and distribution of the capital stock of the company which shall remain after the payment of all its debts, upon the dissolution of the corporation or the expiration of its charter.

SEC. 14. The total amount of the debts of the corporation shall not at any time exceed the amount of the capital stock actually paid in; and in case of any excess, the trustees, under whose administration the same may have happened, except those who may have caused their dissent therefrom to be entered at large on the minutes of the board of trustees at the time, and except those who were not present when the same did happen, shall, in their individual and private capacities, be liable jointly and severally to the said corporation, and in the event of its dissolution, to any of the creditors thereof, for the full amount of such excess.

SEC. 15. No corporation organized under this chapter, shall, by any implication or construction, be deemed to possess the power of issuing bills, notes, or other evidences of debt for circulation as money; of discounting bills, notes, or other evidences of debt, of receiving deposits, of buying gold or silver, bullion or foreign coin; of buying and selling bills of exchange; or exercise any corporate powers except such as shall be necessary to the exercise of the powers so enumerated and given.

SEC. 16. No person holding stock as executor, administrator, guardian, or trustee, or holding it as collateral security, or in pledge, shall be personally subject to any liability as a stockholder of the company; but the person pledging the stock shall be considered as holding the same, and shall be liable as a stockholder accordingly; and the estate and funds in the hands of the executor, administrator, guardian, or trustee, shall be liable in like manner and to the same extent as the testator or intestate, or the ward or person interested in the trust fund would have been, if he had been living and competent to act and hold the stock in his own name.

SEC. 17. It shall be the duty of the trustees of every company incorporated under this act, to cause a book to be kept containing the names of all persons, alphabetically arranged, who are or shall become stockholders of the corporation, and showing the number of shares of stock held by them respectively, and the time when they respectively became the owners of such shares; which book, during the usual business hours of the day, on every day except Sunday and the fourth of July, shall be open for the inspection of stockholders and creditors of the company at the office or principal place of business of the company; and any stockholder or creditor shall have the right to make extracts from such book, or to demand and receive from the clerk or other officer having charge of such book, a certified copy of any entry made therein; such book or certified copy of any entry shall be presumptive evidence of the facts therein stated, in any

action or proceeding against the company, or against any one or more stockholders.

SEC. 18. If the clerk or other officer having charge of such book shall make any false entry, or neglect to make any proper entry therein, or shall refuse or neglect to exhibit the same, or to allow the same to be inspected, or extracts to be taken therefrom, or to give a certified copy of any entry therein, as provided in the preceding section, he shall be deemed guilty of a misdemeanor, and shall forfeit and pay to the party injured a penalty of one hundred dollars, and all damages resulting therefrom; and for neglecting to keep such book for inspection as aforesaid, the corporation shall forfeit to the Territory the sum of one hundred dollars for every day it shall so neglect—to be sued for and recovered in the name of the Territory by the attorney-general in the county in which the principal place of business of the corporation is located.

SEC. 19. Any company incorporated under this chapter may, by complying with the provisions herein contained, increase or diminish its capital stock to any amount which may be deemed sufficient and proper for the purposes of the corporation; but before any corporation shall be entitled to diminish the amount of its capital stock, if the amount of its debts and liabilities shall exceed the sum to which the capital is proposed to be diminished, such amount shall be satisfied and reduced, so as not to exceed the diminished amount of capital.

SEC. 20. Whenever it is desired to increase or diminish the amount of capital stock, a meeting of the stockholders may be called by a notice signed by at least a majority of the trustees, and published for at least four weeks in some newspaper published in the county where the principal place of business or foreign office of the company is located, which notice shall specify the object of the meeting, the time and place where it is to be held, and the amount to which it is proposed to increase or diminish the capital; and a vote of two-thirds of all the shares of stock shall be necessary to an increase or diminution of the amount of the capital stock.

SEC. 21. If at any meeting so called, a sufficient number of votes has been given in favor of increasing or diminishing the amount of capital, a certificate of the proceedings, showing a compliance with these provisions, the amount of capital actually paid in, the whole amount of the debts and liabilities of the company, and the amount to which the capital stock is to be increased or diminished, shall be made out, signed, and verified by the affidavit of the chairman and secretary of the meeting, certified by a majority of the trustees, and filed, as required by the second section of this act; and when so filed, the capital stock of the corporation shall be increased or diminished to the amount specified in the certificate.

SEC. 22. Upon the dissolution of any corporation formed under this chapter, the trustees at the time of the dissolution shall be trustees of the creditors and stockholders of the corporation dissolved, and shall have full power and authority to sue for and recover the debts and property of the corporation, by the name of trustees of such corporation collect and pay the outstanding debts, settle all its affairs, and divide among the stockholders money and other property that shall remain after the payment of the debts and necessary expenses.

SEC. 23. Every such corporation formed for mining purposes shall

annually, in the month of September in each year, make a report in writing, which shall be verified by the oath of the president, secretary, or a trustee, and the principal agent, clerk, or bookkeeper of such corporation, and which report shall contain:

1. The amount of capital actually paid in.
2. The amount of money borrowed by such corporation and remaining unpaid in whole or in part.
3. The amount of money expended the preceding year, and for what purpose.
4. The machinery, tools, and implements on hand for working such mines, and their cost.
5. The buildings and fixtures used, and the cost of their erection or construction.
6. The net amount and value, separately, of all gold, silver, quicksilver, copper, lead, and iron mined or produced during the preceding year, with the actual weight of all gold, silver, and quicksilver mined or produced in a state sufficiently pure to be marketable.
7. The amount and value of all lands and real estate belonging to or claimed by the said corporation in this Territory, particularly describing the same.
8. The name and residence of each stockholder, and the amount of stock held by each.

Such report, when verified as aforesaid, shall be filed in the office of the secretary of the Territory, and a duplicate copy thereof, made and subscribed in all respects as the original, shall within the same time be made and filed in the office of the clerk of the probate court, and it shall be the duty of said secretary of the Territory and of the clerk of the probate court to record such reports at full length in a suitable book to be provided for that purpose; and certified copies of said reports, when necessary, may be used as *prima facie* evidence of the matters therein contained in all courts and places within this Territory, and if any person named in this section shall, as to any material facts in making such report, knowingly swear or affirm falsely, he shall be deemed guilty of perjury and punished accordingly.

SEC. 24. Upon the net proceeds of all mines of whatsoever character in this Territory, such corporation shall pay to the Territorial treasurer, in the month of October in each year, a specific tax of five per cent. on such net amount, and fifty cents on every hundred dollars in value of real estates in land belonging to said corporation, which said Territorial treasurer shall give a sufficient receipt therefor, and which taxes, when so paid, shall be in lieu of all other taxes to be levied, assessed, or collected upon the machinery, tools, implements, and capital employed exclusively for mining purposes by such corporation.

SEC. 25. Sixty per centum of the taxes paid into the treasury under the provisions of the preceding section are hereby appropriated and shall be inviolably applied for the purpose of employing and maintaining a military or other armed force in protecting and defending the property and mining operations of all persons and corporations mining under the provisions of this chapter, from loss or destruction by or from the attacks or incursions of any tribe or tribes of hostile Indians or bands of robbers, which appropriation and application shall be continued for three years from and after the first day of January, one thousand eight hundred and sixty-five, and

until thereafter otherwise directed or altered by the Legislature; and it shall be the duty of the governor of this Territory, in the employment and disposition of the military force thereof, as provided by law or otherwise, faithfully to enforce and carry out the provisions of this section to the full extent of the means provided in the preceding section for that purpose.

SEC. 26. It shall be lawful for any mining company, incorporated under the provisions of this chapter, to have and establish a business office of such corporation out of this Territory, at any place within the United States, and to hold any meeting of the stockholders or trustees of such company at such office so provided for; but every such company, having a business out of this Territory, shall have an office for the transaction of business within this Territory, to be also designated in such articles; and in their office in this Territory they shall retain all records, books, accounts, reports, vouchers, papers, and proceedings named in this chapter, or which may be necessary for the enforcement of its provisions.

SEC. 27. The first meeting of every such association, having a business office out of this Territory, may be held either in this Territory or at such business office, under such notice as their by-laws may prescribe.

SEC. 28. All stock of any such corporation owned by a resident of this Territory, forfeited for non-payment of assessments, or otherwise liable to sale, shall be sold in this Territory; but the said corporation may, by their by-laws, provide for such sales of the stock of persons residing out of this Territory at any place out of this Territory, upon a notice of not less time than that required to be sold within this Territory, and otherwise complying with the provisions of this chapter; and such sale, when so made, shall be as effectual to pass the title to such stock as if made within this Territory.

Of Consolidating Mining Corporations.

SEC. 29. That any mining corporation organized under this chapter is hereby authorized to consolidate with, and purchase from any other mining corporation organized under said chapter, all its property, rights, and franchises, upon such terms as shall be mutually agreed upon; and the stockholders of the corporation whose property, rights, and franchises are thus purchased, shall become stockholders of the corporation purchasing the same, in such proportions as shall be agreed upon in the terms of sale; and the corporation thus selling its property, rights, and franchises, shall become merged in and consolidated with the corporation buying the same.

SEC. 30. No consolidation of one mining corporation with another, under this chapter, shall take place without the prior assent thereto of a majority of the stockholders of each corporation, at the annual meeting of the stockholders, or at a special meeting duly called for that purpose.

SEC. 31. Any mining corporation thus purchasing the property, rights, and franchises of another, shall have power to call in and cancel its prior certificates of stock, and to make and issue to its stockholders, including those of the corporation to be consolidated with it, new certificates of stock, in such proportions to each as each shall be entitled to, according to the terms of consolidation as agreed upon, and to forfeit the stock of any stockholder who shall not return his stock to be cancelled as aforesaid, within

ninety days after actual notice of the resolution of the corporation for calling in its stock, or who shall not return it after publication of notice of said resolution for ninety days, in some newspaper published in the Territory.

SEC. 32. All dues, demands, contracts, and liabilities of any corporation thus selling its property, rights, and franchises to another, shall be and remain in force against the corporation purchasing the same, in like manner as if originally incurred by it; and all rights of creditors, and all liens upon the property of either corporation, shall remain unimpaired, and the respective corporations shall continue to exist so far as may be necessary to enforce the same.

SEC. 33. No corporation with which another may be consolidated under this chapter shall be allowed to increase its capital stock by virtue of this chapter, but such corporation shall, in all respects, be subject to the provisions of this chapter.

SEC. 34. Every such corporation, before they proceed to exercise any of the powers conferred by this chapter, after filing their articles of association, shall also file in writing, in the office of the secretary of the Territory and in the office of the county recorder of the county wherein their business operations are to be conducted, the appointment of an agent residing in this Territory, on whom may be served all legal process or notices provided by law to be served on such corporation; and all process served on such agent, or, in case of his death or absence, on the president, secretary, trustee, or any stockholder of such corporation, shall be taken and deemed a good and sufficient personal service on such corporation for all purposes whatsoever.

SEC. 35. If any such corporation shall fail or refuse to make the report provided for in section twenty-three of this chapter, or shall make a false or fraudulent report—the attorney-general, or other officers or persons prosecuting for the Territory, on request of the governor or secretary of the Territory, shall apply to the district judge of the proper county, upon affidavit, for an order to seize the machinery, property, and effects of such corporation within such county; and also to incorporate therein a further order, suspending the corporate powers of such corporation until further ordered by such judge or the district court of the county. Such judge is hereby empowered, in his discretion, to grant such order in whole or in part; and, when granted, it shall be filed with the clerk of such district court, and a copy thereof, certified under the seal of the court, shall be made by such clerk and delivered to the sheriff of the county to seize and keep such property until further ordered by the judge or court. The sheriff shall immediately seize such property and make return thereof of his doings to the judge who issued such order—which returns shall be filed with the clerk of the court; and, if such order be not vacated by such judge on application and showing cause to him for that purpose, the attorney-general or other officer shall commence proceedings in the proper district court to have such corporation dissolved; and, in case such proceedings be commenced, the property so seized by the sheriff shall be retained by him, subject to the order of the court.

SEC. 36. If any such corporation shall neglect or refuse to pay the taxes provided in section twenty-four of this chapter, the district judge of the proper county, upon affidavit, upon application of the attorney-general or

other officer or person prosecuting for the Territory, may issue an order suspending the corporate powers of such corporation, and commanding the sheriff to seize all property and effects of such corporation within his county, and retain the same until the further order of such judge or of the district court for the same county. Such order shall be issued, filed, and a certified copy thereof delivered to the sheriff, and which shall confer the same powers as the order as provided in the preceding section; and shall make returns thereof as in said section provided. The attorney-general, or other officer or person prosecuting for the Territory, shall then proceed by suit in such district court against such corporation or any stockholder thereof, to collect double the amount of such taxes so neglected or refused to be paid by such corporation. And the court may, in its discretion, upon the rendition of any judgment for such taxes, or at the first term after the return of execution thereon unsatisfied in whole or in part, on motion of such prosecuting officer, enter an order or decree, reciting the proceedings, as the case may be, dissolving such corporation; and no other proceeding shall be necessary for that purpose. Upon dissolving any such corporation under the provisions of this chapter, the court may make such order or decree respecting the property and effects of such corporation, and its application and division, as law and justice shall require.

SEC. 37. Any corporation formed under this chapter may dissolve and disincorporate itself by presenting to the district judge of the county in which the meetings of the trustees are usually held, a petition to that effect, accompanied by a certificate of its proper officers, and setting forth, that, at a general or special meeting of the stockholders called for that purpose, it was decided by a vote of two-thirds of all the stockholders to disincorporate and dissolve the corporation; notice of the application shall then be given by the clerk, which notice shall set forth the nature of the application, and shall specify the time and place at which it is to be heard, and shall be published in some newspaper of the county once a week for six months; or, if no newspaper is published in the county, by advertisement posted up for six months in three of the most public places in the county. At the time and place appointed, or at any other to which it may be postponed by the judge, he shall proceed to consider the application, and, if satisfied that the corporation has taken the necessary preliminary steps and obtained the necessary vote to dissolve itself, and that all claims against the corporation are discharged, he shall enter an order declaring it dissolved.

Of Foreign Corporations.

SEC. 38. Any company for mining purposes incorporated under the laws of any other State or Territory, and operating or doing business as such corporation within this Territory, shall make and file the report at the time and in the manner prescribed in section twenty-three of this chapter, and shall pay the amount of taxes at the time and place provided in section twenty-four of this chapter; and every such corporation, on making such report and paying such taxes, shall be entitled to the protection and privileges provided for in section twenty-five of this chapter.

SEC. 39. Every such corporation as is mentioned in the preceding section, before they shall commence to operate or do business in this Territory shall:

1st. File in the office of the secretary of the Territory a certified copy of their act of incorporation, and the amendments (if any) made thereto.

2d. A copy of any amendments thereafter made.

3d. They shall also file in the office of the secretary of the Territory, and in the office of the county recorder of the county where their principal business is done, the lawful appointment of an agent residing in this Territory, upon whom all notices and all processes against such corporation may be served, and when so served, shall be deemed and taken to be a personal service on such corporation for all purposes whatsoever.

4th. The location of their business office.

SEC. 40. If any such foreign corporation shall refuse or neglect to make the report or to pay the taxes at the time and in the manner provided for, such corporation shall be subject to all the provisions contained in sections thirty-five and thirty-six of this chapter, except that the court shall not order or decree any dissolution of such corporation, but in place thereof, may enjoin them, either for a limited period or perpetually, from exercising any of their corporate powers within this Territory.

SEC. 41. No such foreign corporation shall be required to keep a business office, nor hold any meetings of its stockholders or directors within this Territory.

SEC. 42. Upon a full compliance with the provisions of sections thirty-eight and thirty-nine of this chapter, every such foreign corporation shall be recognised in all courts in this Territory, and may enforce therein any of the provisions of its charter not repugnant to the provisions of this chapter or inconsistent with the laws of this Territory.

An Act Supplementary to Chapter Fifty-one, entitled "Of Corporations for Mining Purposes."

Be it enacted by the Legislature of the Territory of Arizona:

SEC. 1. It shall be deemed a full compliance with the first, second, third, fourth, fifth, sixth, seventh, and eighth subdivisions of section 23 of the chapter of the case, entitled "Of Corporations for Mining Purposes," if such foreign corporations shall file the annual report of the treasurer to the stockholders, verified by the oath of the president; and the resident manager, agent, or superintendent, shall at the same time present a sworn statement of the class and amount of ore raised from said mines, and the net weight of all metal reduced from such ores. Also a description and value of real estate belonging to or claimed by said foreign corporation in this Territory, particularly describing the same.

Approved November 9th, 1864.

CHAPTER LII.

Of the Incorporation of Villages.

SEC. 1. Any territory not included in any incorporated village which shall contain a resident population of not less than three hundred persons; or,

Any territory not so included, which shall contain within its boundaries an extent of not more than two square miles, containing a resident population at the rate of not less three hundred persons to each square mile or territory included within such boundaries, may be incorporated as a village under the provisions of this chapter.

SEC. 2. Any number of legal voters, not less than fifteen, residing within such Territory, may make application for the incorporation of such village to the board of county commissioners of the county in which such territory, or the larger part thereof, may be situated, at any regular session of such board.

SEC. 3. Such persons shall, before making such application, cause an accurate census to be taken of the resident population of such territory, as it may be on some day not more than ten weeks previous to the time of presenting such application, as hereinafter provided; which census shall exhibit the name of every head of a family residing within such territory on such day, and the number of persons then belonging to such family; and it shall be verified by the affidavit of the person taking the same, written thereon or annexed thereto.

SEC. 4. Such application shall be by petition, subscribed by the applicants, who shall be residents of such territory, describing such territory, and setting forth the number of persons residing therein, according to such census; such census, and the affidavit verifying the same, and a copy of the notice herein required, with an affidavit of posting or publishing the same as aforesaid, shall be annexed to such petition; and it shall be presented at the time specified in such notice, or as soon thereafter as the applicants can be conveniently heard in respect thereto.

SEC. 5. The board of county commissioners shall hear all the parties interested therein, who shall appear and ask to be heard; it may adjourn the hearing from time to time; it may direct that a new census be taken, and appoint a person or persons to take the same; and said board may refer any question that may arise in respect to such application to three disinterested commissioners appointed by such board, who shall examine and report thereon.

SEC. 6. If such board, after hearing the parties, shall be satisfied that all the requirements of this chapter in respect to such application have been complied with, and that such territory contains the population required by this chapter, it shall make an order declaring that such territory shall be an incorporated village, by the name specified in such application, or by such other name as to such board shall seem proper; and said board shall in such order appoint three inspectors of election to hold the first election required by this chapter; said board shall also appoint the time and place of holding the said first election.

SEC. 7. The inspectors so appointed shall immediately give notice of the time and place of holding such election, and the officers to be elected at such election, by posting up written notices thereof in at least three public places in such Territory, at least three weeks previous to the day appointed for holding the same, or by publishing the same in some newspaper printed in such Territory for three successive weeks immediately preceding the time aforesaid. At such election the polls shall be opened at ten o'clock in the forenoon, and shall close at four o'clock in the afternoon.

SEC. 8. Such inspectors shall preside and act as inspectors at such meeting; the president and trustees, or any three of them, may preside at every subsequent election; the clerk of said village may be clerk thereof, and all the laws of this Territory in relation to the election and canvass of votes, certifying the election of officers, and notifying them of their election, shall apply to such first election and to all subsequent elections of officers in such village, so far as the same may be applicable and not inconsistent with the provisions of this chapter.

SEC. 9. Every elector residing in such Territory, and qualified to vote at a general election, may vote at all elections in said village.

SEC. 10. The inspectors at such first election, and at all subsequent elections, shall canvass the votes given thereat, shall openly declare the result, and shall make and subscribe a certificate of such canvass, which shall show the whole number of votes given, the number given for each person voted for, and the office for which he shall have been voted for; which certificate shall be recorded in the records of said village.

SEC. 11. No person not an elector shall be eligible to any office under the provisions of this chapter, and the persons eligible, and having the greatest number of votes at any election herein provided for, shall be declared elected; and if two or more shall have an equal and the greatest number of votes, the officers presiding at such election shall forthwith determine by lot which shall be deemed elected.

SEC. 12. Every person elected at any election under the provisions of this chapter, and whose name is entered on the poll-list as a voter thereat, shall be deemed notified of his election; and every person so elected whose name shall not be so entered, shall be notified of his election within ten days thereafter; and if elected at such first election, such notice shall be given by the inspectors presiding thereat; and if elected at any subsequent election, he shall be notified by the clerk of such village.

SEC. 13. The officers first elected shall hold their offices until the first Tuesday in March following their election, and those subsequently elected (except the clerk), shall hold their respective offices until the first Tuesday in March following their election, and until their successors are elected and qualified.

SEC. 14. Elections for officers (except at the first election), shall be held on the first Tuesday in March in each year, at such place as shall be designated by the board of trustees.

SEC. 15. The officers of such village shall be a president, six trustees, two assessors, one marshal, one treasurer, one clerk, one street commissioner, and one pound master.

SEC. 16. Every officer elected in such village shall, within ten days after he shall be notified of his election, take and subscribe the oath of office prescribed by law, before any person authorized to administer oaths, and file the same with the clerk of such village.

SEC. 17. The board of trustees may order a special election to fill any vacancy that may occur in any of the offices mentioned in this chapter, but no special election shall be held until at least ten days' notice shall have been given of the time and place of holding the same, as herein provided.

SEC. 18. It shall be the duty of the clerk of said village to give at least ten days' notice in writing, by posting the same in at least three public places in said village, of the time and place of holding all elections.

SEC. 19. It shall be the duty of the president to preside at all meetings of the electors and of the board of trustees, and the clerk shall keep a fair and accurate record of the proceedings.

SEC. 20. The president and trustees of such village, when organized as hereinbefore provided, shall be a body corporate and politic, with perpetual succession, to be known by the name designated as aforesaid, and by that name shall be known in law, and shall be capable of suing and being sued, of pleading and being impleaded in all courts and places, and may have a common seal, and may alter and change the same at pleasure, and may purchase, hold, and convey real and personal estate for the use of such corporation.

SEC. 21. The president and trustees shall have power to raise, by general tax levied upon the taxable property liable to be assessed in such village, not exceeding one per cent. in any one year, for the following purposes:

1. For paying the expenses of procuring such village to be incorporated;
2. For making and maintaining such public wells, cisterns, and other reservoirs of water, and for procuring the necessary fixtures therefor, as may be deemed necessary;
3. For procuring the necessary ground, and erecting a pound for the use of such village, and for keeping the same in repair;
4. For purchasing, fencing, ornamenting, and improving ground for a cemetery or burial-place;
5. For laying out, opening, improving, and working the highways, streets, lanes, and alleys in such village;
6. For making and repairing side and cross-walks, and improving the public grounds;
7. For incidental expenses.

SEC. 22. All taxes raised in such village shall be assessed and collected in conformity, so far as practicable, with the provisions of law in respect to the assessment and collection of taxes by the board of county commissioners.

SEC. 23. The treasurer and marshal of such village shall, respectively, before they enter upon the exercise of the duties of their respective offices, give such security for the faithful discharge of the trusts reposed in them, as the president and trustees may direct and require.

SEC. 24. The president and trustees shall have power to appoint all other officers necessary, under the provisions of this chapter, for said village, whose elections are not herein provided for; to make by-laws and ordinances relative to the duties, powers, and fees of the marshal, treasurer, assessors, and other officers; relative to the time and manner of working upon the streets, commons, lanes, and alleys; relative to the time and manner of assessing, levying, and collecting all highway and other taxes; relative to the prevention, removal, and abatement of nuisances; to construct sewers, cisterns, and reservoirs; to dig and maintain public wells; to license showmen; to suppress gaming; to compel the owners of buildings to procure and keep fire buckets; to regulate bridges; to protect the property of the citizens of such village from fires; relative to the calling of meetings of the electors; relative to the keeping and sale of gunpowder; relative to the restraining of swine, horses, and other animals from running at large in the streets, commons, lanes, and alleys; to establish, maintain and regulate one or more pounds; to suppress gaming tables kept for hire, gain, or reward; for the suppression of riots; for preventing and suppressing disorderly houses, or houses of ill-fame; for the apprehension and punishment of vagrants, drunkards, and idle persons; to regulate the measurement of firewood and the weighing of hay; to prescribe stands for carts or drays, and for wood, hay, and produce exposed for sale; to prevent and punish immoderate driving in any of the streets of said village; to prevent encumbering the streets, sidewalks, alleys, or public grounds, and to regulate all graveyards and cemeteries within or belonging to said village; to preserve shade and ornamental trees, and to make all such by-laws and ordinances as to them shall seem necessary for the safety and good government of said village and its inhabitants, not inconsistent with the provisions of this chapter, or the laws of this Territory: Provided, that no by-law or ordinance of said corporation shall have any effect until the same shall have been published three weeks successively in a newspaper printed in said village, or by posting up in at least three public places in said village.

SEC. 25. The president and trustees shall have power to lay out and establish, open, make, and alter such streets, lanes, and alleys, sidewalks, highways, watercourses, and bridges, as they may deem necessary for the public convenience; and if they shall require the lands of any person for such purpose, the said president and trustees shall give notice to the owner or party interested, his, her, or their agent or attorney, either by personal service or by written notice posted in at least three public places in said village, three weeks next preceding the meeting of the said president and trustees for the purpose aforesaid; and the said president and trustees are hereby authorized to contract for and purchase such lands of such owner for the purpose aforesaid; and in case such owner or owners refuse to sell or convey such lands or premises for the purpose aforesaid, or the parties fail to agree, it shall and may be lawful for the president and trustees to order and direct the clerk to issue a *venire facias* directed to the marshal, or to any constable in the county in which said village or any part thereof may be situate, commanding him to summon and return a jury of twelve disinterested freeholders, residing without the limits of said village, to appear before any justice of the peace in said village at a time to be therein stated, to inquire into the necessity of using such grounds or premises, and the just compensation to be made therefor to the owner or owners of or interested in such lands or premises; which jury being first duly sworn by said justice faithfully and impartially to inquire into the necessity of using such

lands or premises, and the just compensation to be made therefor; and after having viewed the premises, if they shall deem it necessary for the village to use said lands, shall inquire and assess such damages and recompense as they may think proper to award to the owner or owners of such lands and premises, according to their respective estates and interests therein; and the said justice shall, upon the return of such assessment or verdict, render judgment therefor confirming the same; and such sum or sums so assessed, together with the costs, shall be paid or tendered before such street, lane, alley, or highway shall be opened, established, or altered, to the claimant or claimants thereof. It shall thereupon be lawful for the president and trustees to cause the said lands and premises to be occupied and used for the purposes aforesaid: Provided, that any party claiming damages as aforesaid may have the right to remove such proceedings by appeal to the district court for the county in which such proceedings were had, upon giving notice of his, her, or their intention so to do to said justice in writing within ten days, or in case such party does not reside in said village, then within thirty days after the rendition of such verdict, and the judgment thereon as aforesaid; and upon filing a transcript of the proceedings aforesaid, duly certified by said justice, within forty days after the verdict and judgment as aforesaid in the said district court, the same proceedings shall thereafter be had thereon as is prescribed by law in other cases of appeal: Provided, that if the final judgment of said court shall not exceed the damages assessed before the said justice at least five dollars, the party appealing shall pay the costs occasioned by such appeal.

SEC. 26. Any justice of the peace residing within such village may be, and is hereby authorized and empowered to inquire, hear, and determine all offences committed within the limits of such village, against any of the by-laws, ordinances, and regulations of such board of trustees, and to punish the offender or offenders as prescribed by such by-laws and ordinances: *Provided*, that any person charged with violating any of said by-laws or ordinances, may have a trial by jury as in other cases.

SEC. 27. The marshal, clerk, assessor, and such officers as may be appointed by the board of trustees, shall receive such compensation for their services as the by-laws and ordinances shall direct.

SEC. 28. The board of trustees shall, at the expiration of each year, cause to be published a just and true statement of all moneys received, and of all moneys expended during the year next preceding; which statement shall contain in detail all receipts and expenditures.

SEC. 29. In actions, suits, and proceedings wherein the president and trustees of such village shall be a party, no citizen thereof shall be deemed an incompetent witness or juror, on account of the interest of such citizen in the event of such action, suit, or proceeding: *Provided*, that such interest be only such as is held in common with the citizens of said village.

SEC. 30. Process against said corporation may be served by reading the same to, and leaving an attested copy with, the clerk or president of said village: *Provided*, that the first process shall be a summons served at least ten days before the return day thereof.

SEC. 31. Every assessment of taxes lawfully imposed or levied by the president or trustees of such village, on any lands, tenements, or heredita-

ments within said village, shall be and remain a lien upon such lands, tenements, or hereditaments from the time of the delivery of the tax roll to the marshal until the same is paid; and the owner or occupant of such lands, tenements, and hereditaments, shall be liable upon demand to pay every such assessment or tax, and in default thereof it shall be lawful for the marshal of such village to levy upon and sell personal estate, and for want thereof the real estate so assessed, rendering the surplus, if any, after deducting the costs and charges of such sale, to the person against whom the tax is levied: *Provided*, that whenever any real estate shall be sold by said marshal, notice thereof shall be published in a newspaper printed in such village, if there be one, or by posting written notices thereof in at least three public places in said village, at least four weeks immediately preceding the time of such sale; and the marshal, on such sale, shall give to the purchaser or purchasers of any such lands a certificate in writing, describing the lands so purchased, the amount of the bid, and the time when the purchaser thereof will be entitled to a deed for said land; and if the said lands are not, within one year from the date of such sale, redeemed by the payment to the treasurer of such village, for the use of the purchaser, his heirs or assigns, the sum mentioned in such certificate, with interest thereon at the rate of twenty per cent. per annum from the date of such certificate, the said marshal, or his successor in office, shall, at the expiration of said year, execute to the purchaser or purchasers, his or their heirs or assigns, a conveyance of the lands so sold, and the said conveyance shall be *prima facie* evidence that the sale and all the proceedings therein prior to such sale were regular; and every such conveyance executed by the said marshal under his hand and seal, acknowledged and recorded, may be given in evidence in the same manner as a deed regularly executed and acknowledged by the owner, and duly recorded; and all personal estate sold for the payment of taxes, shall be sold in such manner as the by-laws and ordinances of such village shall direct.

SEC. 32. Whenever the assessors of such village shall have completed their assessment-roll and valuation of the property, real and personal, in such village, they shall give notice thereof by publishing in a newspaper printed in said village, by at least two insertions, or posting up the same in at least three public places in said village, stating the place where said roll is left for inspection, and the time when and place where they will meet to hear the objections of any person interested, to the valuation so made by them; and at the time so appointed the assessors shall meet, and on the application of any person considering himself aggrieved, may review and reduce the said valuation, on sufficient cause shown to the satisfaction of said assessors; and if any person or persons shall conceive himself or themselves aggrieved by the final decision of the said assessors, they shall have the right of appealing from such decision, at any time within five days, to the president and trustees, who are in like manner authorized to review said roll, and upon sufficient cause shown, to reduce such valuation.

SEC. 33. It shall be the duty of the president and trustees to make out a duplicate of the tax-roll, charging each individual therein an amount of tax in proportion to the amount of real and personal estate of such individual within such village, and annex thereto their warrant, signed by the president and clerk, and deliver the same to the marshal, whose duty it shall be to collect the said taxes, within such time and in such manner as the by-laws shall direct.

SEC. 34. All moneys received by the marshal shall be paid over to the treasurer of said village.

SEC. 35. The street commissioner shall superintend and direct the working, planking, repairing, paving, grading, and opening all streets, lanes, alleys, sidewalks, cross-walks, highways, and bridges, within such village in such manner as may, from time to time, be directed by the president and trustees.

SEC. 36. The president and trustees may establish the line parallel to and bounding upon the street or highway upon which buildings may be erected, and beyond which such buildings shall not extend.

SEC. 37. The clerk of such village shall hold his office for the term of two years, and shall be a police justice of the peace, and shall have cognizance of all matters arising under and by virtue of this chapter, and the by-laws and ordinances of the president and trustees, and may issue all process necessary to enforce the same, with full power to try, hear, and determine all suits, actions, and proceedings instituted under and by virtue of this chapter, in like manner, and with like effect as may be done by any other justice of the peace by the laws of this Territory, and with like fees; and all process shall be tested and made returnable, and the proceedings shall be conducted in like manner as prescribed for justices of the peace by the laws of this Territory; and appeals may be taken from judgments rendered by such police justices in the same time, and in the same manner, as provided in other cases.

SEC. 38. The marshal shall be a police constable for said village, and may serve any process issued by the police justice or any other officer by virtue of this chapter, and shall perform all such services as may be required by the president and trustees, and shall be entitled to the same fees as constables for similar services; and shall be entitled to the same privileges, and subject to the same liabilities as constables, in the performance of similar duties; said marshal shall have the general supervision of the streets, commons, lanes, public grounds, burial-places, and alleys in said village, under the direction of the president and trustees, and shall see that the by-laws and ordinances are properly observed.

SEC. 39. The docket of the clerk, kept by him as such police justice, shall be and remain a public record in his office, and shall be delivered over, together with all other books and papers belonging to his office as clerk, to his successor in office; and his successor in office shall be authorized to continue and complete all proceedings commenced by his predecessor in office as such police justice.

SEC. 40. Any village incorporated under the provisions of this chapter, shall have power in its corporate name to preëmpt or purchase the lands of the United States, not exceeding six hundred and forty acres, within or adjoining its corporate limits for the use and benefit of such village; and may plat the same, and sell and convey it in such quantities as the president and trustees shall determine upon; and may appropriate so much thereof as they see fit for public grounds, parks, or squares. The money arising from the sale of any such lands shall belong to such corporation, and shall be used for the purposes provided for in this chapter.

CHAPTER LIII.

Of Electric Telegraphs.

SEC. 1. That any person or persons, association, or company may be, and they are hereby authorized to construct and maintain lines of electric telegraph, together with all necessary fixtures appurtenant thereto, from point to point, upon and along any of the public roads or highways, and across any of the waters or bridges within the limits of this Territory, or upon the land of any individual, the owners of the land through which said telegraphic lines may pass having first given their consent: Provided, that the same shall not in any instance be so constructed as to incommode the public in the use of said roads or highways and bridges, or endanger or injuriously interrupt the navigation of said waters.

SEC. 2. At every telegraphic office, established for the purpose of communicating intelligence on any of the lines constructed by virtue of the provisions contained in the foregoing section, communications received for the transmission of intelligence upon any of said lines, shall have precedence in the order in which they are received, and be communicated accordingly; and any violation of the provisions of this section by any officer, person, or persons having charge of, or employed in conducting or transacting the business of said office, shall be punished by fine not exceeding one thousand dollars, or by imprisonment not exceeding one year, or by both, at the discretion of the court having cognizance of the same.

SEC. 3. The owner or owners of any telegraphic line, constructed under the provisions of this chapter, shall pay to the Territory an annual tax of one dollar upon every mile in length so constructed, in lieu of all other taxes, which shall be paid in the last week in January in each year, to the Territorial treasury.

SEC. 4. The Territory shall have a lien upon any line constructed as aforesaid, and its appurtenances, for all taxes which may accrue thereon to the Territory, by virtue of the provisions of the foregoing section; and in case the tax, or any part thereof, shall remain unpaid at the time hereinbefore provided for its payment, then the Territorial treasurer shall have power, and it is hereby made his duty, to advertise such line for sale for the amount of such tax remaining unpaid, in some newspaper published in the Territory, by giving three weeks' previous notice, and to sell the same accordingly for the amount of tax, and interest and charges of sale: Provided, the same shall not be paid before the time of sale; and the surplus money, if any, shall be paid to the owner or owners of such line.

SEC. 5. Any person or persons who shall knowingly or wilfully injure, molest, or destroy any of said lines or appurtenances belonging thereto, and any person who shall counsel or advise the injury, molestation, or destruction of any of said lines or appurtenances thereto belonging, shall be deemed guilty of a misdemeanor, and be punished by fine, not exceeding one thousand dollars, or imprisonment not exceeding one year, or both, at the discretion of the court having cognizance thereof.

SEC. 6. If any operator, or other person connected with such telegraph line, shall disclose the contents of any private message or communication

transmitted or to be transmitted over such line of electric telegraph, unless the same shall be dangerous to the public, or of a criminal character, the person so offending shall be guilty of a misdemeanor, and upon conviction, shall pay a fine of not less than fifty nor more than five hundred dollars, or be imprisoned not less than ten days nor more than six months; he shall also be liable to any party interested in such private message or communication for all damages he may sustain by reason of the disclosing of such contents which may be recorded before any court of competent jurisdiction.

CHAPTER LIV.

Of the Liability for causing Death by Wrongful Act, Neglect, or Default.

SEC. 1. Whenever the death of a person shall be caused by wrongful act, neglect, or default, and the act, neglect, or default is such as would (if death had not ensued) have entitled the party injured to maintain an action and recover damages, in respect thereof, then and in every such case, the person who, or the corporation which would have been liable, if death had not ensued, shall be liable to an action for damages, notwithstanding the death of the person injured, and although the death shall have been caused under such circumstances as amount in law to felony.

SEC. 2. Every such action shall be brought by, and in the names of the personal representatives of such deceased person, and the amount recovered in every such action shall be for the exclusive benefit of the widow and next of kin of such deceased person, and shall be distributed to such widow and next of kin in the proportions provided by law in relation to the distribution of personal property, left by persons dying intestate; and in every such action, the jury may give such damages as they shall deem fair and just, with reference to the pecuniary injury resulting from such death, to the wife and next of kin of such deceased person: Provided, that no moneys so recovered shall be applied in discharge of any debts or liabilities of the person so killed, nor pass into the hands of his executors or administrators as assets of his estate.

CHAPTER LV.

Of Acequias or Irrigating Canals.

SEC. 1. All rivers, creeks, and streams of running water in the Territory of Arizona are hereby declared public, and applicable to the purposes of irrigation and mining, as hereinafter provided.

SEC. 2. All rights in acequias or irrigating canals heretofore established shall not be disturbed, nor shall the course of such acequias be changed without the consent of the proprietors of such established rights.

SEC. 3. All the inhabitants of this Territory, who own or possess arable and irrigable lands, shall have the right to construct public or private acequias, and obtain the necessary water for the same from any convenient river, creek, or stream of running water.

SEC. 4. Whenever such public or private acequias shall necessarily run through the lands of any private individuals not benefited by said acequias, the damages resulting to such private individuals, on the application of the party interested, shall be assessed by the probate judge of the proper county in a summary manner.

SEC. 5. No inhabitant of this Territory shall have the right to erect any dam, or build a mill, or place any machinery, or open any sluice, or make any dyke, except such as are used for mining purposes or the reduction of metals, as provided for in sections six and seven of this chapter, that may impede or obstruct the irrigation of any lands or fields, as the right to irrigate the fields and arable lands shall be preferable to all others; and the justices of the peace of the respective precincts shall hear and determine the question relative to all such obstructions in a summary manner, and cause the removal of the same by order directed to the constable of the precinct or sheriff of the county, who shall proceed to execute the same without delay.

SEC. 6. Where reduction works or other mining apparatus shall be placed upon lands previously held for agricultural purposes, the person or persons so holding such lands shall be entitled to remuneration from the person or persons erecting or owning said reduction works or mining apparatus. The amount of remuneration shall be adjudged by three or five disinterested persons or by the probate judge, as the parties interested shall agree, and in case such agreement cannot be made, then the party injured may bring suit for damages.

SEC. 7. When any ditch or acequia shall be taken out for agricultural purposes, the person or persons so taking out such ditch or acequia shall have the exclusive right to the water, or so much thereof as shall be necessary for said purposes, and if at any time the water so required shall be taken for mining operations, the person or persons owning said water shall be entitled to damages, to be assessed in the manner provided in section six of this chapter.

SEC. 8. All by-paths or foot-paths across any cultivated fields are prohibited, under penalty of a fine not to exceed ten dollars, for the benefit of the public acequia, to be assessed in a summary manner by the justice of the peace of the precinct; and if the person so offending shall not have wherewith to pay the fine, he shall be adjudged and sentenced to work ten days on the public acequia.

SEC. 9. All owners and proprietors of arable and irrigable land bordering on, or irrigable by any public acequia, shall labor on such public acequia, whether such owners or proprietors cultivate the land or not.

SEC. 10. All persons interested in a public acequia, whether owners or lessees of land, shall labor thereon in proportion to the amount of land owned or held by them, and which may be irrigated or subject to irrigation.

SEC. 11. It being impracticable to properly enclose the fields in this Territory, all animals shall be kept under a shepherd, so that no injury may result to the fields, and if any damage should result, it shall be paid by the owners of the animals causing the same, to be assessed by the justice of the peace of the precinct in a summary manner, and paid to the person or persons whose fields may have been damaged.

SEC. 12. In case a community or people desire to construct an acequia in any part of this Territory, and the persons desiring to construct the same are the owners or proprietors of the land upon which they design constructing the said acequia, no one shall be bound to pay damages for such land, as all persons interested in the construction of said acequia are to be benefited thereby.

SEC. 13. Immediately after the publication of this chapter, it shall be the duty of the several justices of the peace in this Territory to call together in their respective precincts all the owners and proprietors of lands irrigated by any public acequia, for the purpose of electing one or more overseers for said acequia for the corresponding year.

SEC. 14. The manner of conducting such elections and the number of overseers shall be regulated by the justices of the peace of their respective precincts; and the only persons entitled to vote at said elections shall be the owners and proprietors of lands irrigated by said acequias.

SEC. 15. The pay and perquisites of said overseer shall be determined by a majority of the owners and proprietors of the lands irrigated by said acequias, and paid by them.

SEC. 16. It shall be the duty of the overseers to superintend the opening, excavations, and repairs of said acequias; to apportion the number of laborers furnished by the owners and proprietors; to regulate them according to the quantity of land to be irrigated by each one from said acequia; to distribute and apportion the water in proportion to the quantity to which each one is entitled according to the land cultivated by him; and, in making such apportionment, he shall take into consideration the nature of the seed sown or planted, the crops and plants cultivated; and to conduct and carry on such distribution with justice and impartiality.

SEC. 17. During years when a scarcity of water shall exist, owners of fields shall have precedence of the water for irrigation, according to the dates of their respective titles or their occupation of the lands either by themselves or their grantors. The oldest titles shall have precedence always.

SEC. 18. It shall be the duty of each of the owners and proprietors to furnish the number of laborers required by the overseer, at the time and place he may designate for the purposes mentioned in the foregoing section and for the time he may deem necessary.

SEC. 19. If any overseer of any public acequia, after having undertaken to serve as such, shall wilfully neglect or refuse to fulfil the duties required of him by this chapter, or conduct himself with impropriety or injustice in his office as overseer; or take any bribe in money, property, or otherwise, as an inducement to act improperly; or neglect the duties of his office—he shall be fined for each of said offences in a sum not exceeding one hundred

dollars nor less than fifty dollars, to be recovered before any justice of the peace of the county—one-half of which shall be paid to the county, and the other half to the person bringing suit for the same—the said suit to be brought in the name of the Territory of Arizona; and said overseer, on being convicted a second time, shall be removed from his office by the justice of the peace of the precinct, and shall take such pay and perquisites as may be due him for services rendered.

SEC. 20. Upon such removal, the justice of the peace shall order a new election to fill the vacancy thereby occasioned, which shall be conducted in the manner prescribed in the thirteenth and fourteenth sections of this chapter.

SEC. 21. If any owner or proprietor of land irrigated by such acequia shall neglect or refuse to furnish the number of laborers required by the overseer, as required in the eighteenth section of this chapter, after having been duly notified by the overseer, he shall be fined for each offence in a sum not exceeding ten dollars, for the benefit of said acequia, which shall be recovered by the overseer before any justice of the peace in the county; and, in such cases, the overseer shall be a competent witness to prove the offence or any fact that may serve to constitute the same.

SEC. 22. If any person shall in any manner interfere with, impede, or obstruct any of said acequias, or use the water from it without the consent of the overseer, except as provided in section seven of this chapter, during the time of cultivation, he shall pay for each offence a sum not exceeding ten dollars, which shall be recoverable in the manner prescribed in the foregoing section for the benefit of said acequia; and he shall further pay all damages that may have occurred to the injured parties; and, if such person has not wherewith to pay said fine and damages, he shall be sentenced to fifteen days' labor on said public acequia.

SEC. 23. All fines and forfeitures, recovered for the use and benefit of any public acequia, shall be applied by the overseers to the improvements, excavations, and repairs which may be necessary on said acequia, and for the construction of bridges where they may be crossed by any public street or road.

SEC. 24. In all cases of conviction under this chapter, an appeal shall be allowed to the probate court, which appeal shall be taken and conducted as all other appeals from the decisions of the justices of the peace.

SEC. 25. The regulations of acequias, which have been worked according to the laws and customs of Sonora and the usages of the people of Arizona, shall remain as they were made and used up to this day, and the provisions of this chapter shall be enforced and observed from the day of its publication.

SEC. 26. All plants and trees of any description growing on the banks of any acequia shall belong to the owners of the land through which said acequia may run.

SEC. 27. Any person owning lands which may include a spring or stream of running water, or owning lands upon a river where there is not population sufficient to form a public acequia, may construct a private acequia for

his own uses, subject to his own regulations, provided it does not interfere with the rights of others.

SEC. 28. All laws conflicting with the provisions of this chapter are hereby repealed.

CHAPTER LVI.

Of the Support of Poor Persons and Orphan Children of Indians.

SEC. 1. The father, mother, children, and brothers and sisters, being of sufficient ability, of any poor person who is blind, old, lame, impotent, or decrepit, so as to be unable to maintain himself, shall, at their own charge, relieve and maintain such poor person, in such manner as shall be approved by the directors of the poor of the precinct where such poor person may be.

SEC. 2. Upon the failure of any relative to relieve and maintain any such poor person, it shall be the duty of a justice of the peace of the precinct where such poor person may be, to apply to the probate court for the county where such relative may dwell for an order to compel such relief; of which application at least fourteen days' notice in writing shall be given, by serving the same personally, or by leaving the same at the dwelling-place of the person to whom it may be directed, in case of his absence therefrom, with some person of sufficient age.

SEC. 3. The court to which such application may be made, shall proceed in a summary way to hear the proofs and allegations of the parties, and shall order such of the relatives aforesaid of such poor person, as appear to be of sufficient ability, to relieve and maintain such poor person, and shall therein specify the sum which will be sufficient for the support of such poor person, to be paid weekly.

SEC. 4. The said court shall also in such orders direct the relative or relatives who shall perform that duty, in the following order: the father shall be first required to maintain such poor person, if of sufficient ability; if there be no father, or he be not of sufficient ability, then the children of such poor person; if there be no such children, or they be not of sufficient ability, then the mother, if she be able to do so; and if the mother be not able, then to the brothers and sisters.

SEC. 5. If it shall appear that any such relative is unable wholly to maintain such poor person, but is able to contribute towards his support, the court may, in its discretion, direct two or more relatives of different degrees to maintain such poor person, and shall prescribe the proportion which each shall contribute for that purpose; and if it shall appear that the relatives liable as aforesaid are not of sufficient ability wholly to maintain such poor person, but are able to contribute something therefor, the court shall direct the sum, in proportion to their ability, which such relations shall severally pay weekly for that purpose.

SEC. 6. Such order may specify the time during which the relatives aforesaid shall maintain such poor person, or during which any of the said

sums so directed by the court shall be paid, or it may be indefinite, or until the further order of the court; and the said court may from time to time vary such order, whenever circumstances shall require it, on the application either of any relative affected thereby, or of any justice of the peace of the precinct, upon fourteen days' notice being given in the manner aforesaid.

SEC. 7. The costs and expenses of any application under the provisions of this chapter shall be ascertained by the court, and paid by the relatives against whom any order may be made, and the payment thereof, and obedience to the order of maintenance, and to any order of such court for the payment of money as aforesaid, may be enforced by process of attachment from such court.

SEC. 8. If any relative who shall have been required by such order to relieve or maintain any poor person, shall neglect to do so in such manner as shall be approved by the probate court or a justice of the peace of the precinct where such poor person may be, and shall neglect to pay weekly the sum prescribed by the court for the support of such poor person to a justice of the peace of the precinct, the said justice may maintain an action against such relatives, as for moneys paid, laid out, and expended, and shall recover therein the sum so prescribed by the said court for every week the said order shall have been disobeyed, up to the time of such recovery, with costs of suit, for the use of the poor.

SEC. 9. The judge of probate may provide for the support of paupers at the expense of the county, that may be idiots or lunatics, in such place, and in such manner as shall best promote the interests of the county, and conduce to the comfort and recovery of such paupers.

Of the Support of Poor Persons by Counties.

SEC. 10. Every poor person who is blind, old, lame, sick, or decrepit, or in any other way disabled or enfeebled, so as to be unable to maintain himself, and who shall not be relieved or maintained by his relatives as provided in the preceding sections of this chapter, shall be maintained by the county in which he may be, according to the following provisions:

SEC. 11. Any justice of the peace, on application, shall inquire into the circumstances of such poor person as is mentioned in the preceding section, and if satisfied that such person needs assistance, may draw his order on the county treasurer, payable out of the poor fund, for such amount as he may deem necessary, not exceeding the sum of twenty dollars per month for any one person, and the orders so drawn shall be paid by the treasurer out of such poor fund.

SEC. 12. Such justice may direct the application of such money for the benefit of such poor person, whenever he shall deem it necessary so to do.

SEC. 13. Any person who shall send, carry, transport, remove, or bring, or who shall cause or procure to be sent, carried, transported, removed, or brought, any poor or indigent person from any county into any other county, without legal authority, and there leave such poor person, or who shall entice such poor person so to remove, with intent to make any such county to which the removal shall be made chargeable with the support of

such pauper, shall be deemed guilty of a misdemeanor, and on conviction thereof, shall be imprisoned in the county jail not exceeding one year, or fined not exceeding two hundred dollars, or both, in the discretion of the court.

Of the Support of Minor Indians.

SEC. 14. Any person into whose care or custody shall come any captive Indian child of a hostile tribe, or any minor Indian child of other than hostile tribes, shall, within twenty days thereafter, produce such child before the judge of probate or a justice of the peace for the county, and may apply to such judge or justice to have such Indian child bound to him until he shall arrive at the age of twenty-one years; and if a female, at the age of eighteen years.

SEC. 15. Such judge or justice shall inquire summarily into such application, and if satisfied that said minor Indian is under the age of eighteen years, and that the person so applying is suitable to have such minor, may by indenture bind such child to service to such person until he or she shall arrive at the age of twenty-one years and eighteen years respectively, the said judge or justice determining the time, upon the express conditions that such minor child shall be humanely treated, and properly clothed and fed during the continuance of such indenture, and that the care, custody, and services of such child shall not be transferred or changed to any other person without the consent in writing of the judge of probate first obtained for that purpose; any violation of such conditions shall be deemed a forfeiture of such indenture.

SEC. 16. Any person having a minor Indian in his care, as described in the two preceding sections, who shall neglect to clothe and suitably feed such minor Indian, or shall inhumanly treat him or her, on conviction thereof shall be subject to a fine not less than ten dollars, at the discretion of a court or jury; and the justice of the peace or the judge of probate, in his discretion, may place the minor Indian in the care of some other person, giving him the same rights and liabilities that the former master of said minor was entitled and subject to.

SEC. 17. All expenses incurred under the provisions of this chapter shall be audited and paid by the board of county commissioners.

CHAPTER LVII.

Of Fees of Officers.

SEC. 1. The officers and persons named in this chapter shall be entitled to the fees therein provided for each respectively—that is to say:

Fees of Attorney-General.

The attorney-general, in addition to the salary and compensation fixed by law, shall be entitled to the following fees: On every trial for murder

when the defendant is convicted, fifty dollars; when not convicted, twenty-five dollars. For every conviction under any statute against gaming or gambling, twenty dollars. The foregoing fees to be audited and paid by the board of county commissioners of the proper county. In all other criminal prosecutions where by law costs are taxed against the defendant, he shall have taxed therein an attorney fee of twenty dollars, and in all civil actions prosecuted by him as attorney-general, and upon which a judgment or decree is obtained, an attorney fee of twenty-five dollars; to be taxed as costs against the defendant, or such amount in the last case as may be fixed by law for attorneys' fees in civil cases. Upon all moneys which as attorney-general he shall collect and pay over according to law, five per cent. to be retained by him at the time of paying over such moneys.

Fees of the Clerk of Supreme Court.

SEC. 2. For filing papers sent at any one time from an inferior court, three dollars; for issuing any process of court, two dollars; for entering any motion, rule, or order, one dollar; for entering judgment, three dollars; for certified copy of any record, opinion of court, or any paper or proceeding, for each folio, twenty cents; for entering each cause on the calendar, and making copy for the bar, two dollars; for every remittance or mandate, for each folio, twenty cents; for searching records or files in his office (but no charge to be made to suitors or attorneys) in each case, one dollar; for filing each paper, fifty cents; for certificates of admission as attorney or counsellor, three dollars; for administering oath or affirmation, fifty cents; for taking acknowledgment of deed, one name, one dollar; each additional name, fifty cents.

Fees of Clerk of District Court.

SEC. 3. For each execution, attachment, writ of possession, or other original writ, one dollar; for docketing each execution, fifty cents; for entering appearance, discontinuance, nonsuit, default, motion, rule, or order, one dollar; for every certificate under seal or for issuing or filing, one dollar; for every notice or certificate required to be put upon any complaint or upon any process, one dollar; for each calling and swearing a jury, fifty cents; for entering each cause in a calendar, and making a copy for the court or bar, one dollar; for entering every cause, one dollar; for receiving and entering a verdict, one dollar; for filing each paper, twenty-five cents; for entering every final judgment, for each folio, one dollar; for entering satisfaction of judgment, one dollar; for copy of record or paper, for each folio, twenty cents; searching records (not charging parties to suit) fifty cents; for administering oath and certifying same, fifty cents; for taking testimony of witness in court when required by law or at the request of any party, for each folio, twenty cents.

Fees of Clerks of Probate Courts.

SEC. 4. For drawing letters testamentary or of administration, or a certificate of the appointment of appraisers, two dollars; for each notice given by posting or publication, two dollars; for taking testimony and recording proceedings in all cases in regard to mines, minerals, or mining interests,

and not otherwise provided for, for each folio, twenty cents—for all other services, the same fees as are allowed clerks of the district courts for similar services.

Fees of Probate Judge.

SEC. 5. For every order or judgment, when not contested, one dollar, when contested, three dollars; for hearing and deciding on proof of will, when not contested, two dollars, when contested, five dollars; for taking proof of, and ordering, recording, or rejecting any foreign will, five dollars; for taking proof of any will other than in the English language, five dollars; for each cause entered in his court or filed therein, requiring services on his part, one dollar; for hearing and determining any claim or dispute relative to mines, minerals, or mining interests, five dollars for the first day, and three dollars for each subsequent day.

Fees of Notaries Public.

SEC. 6. The drawing and copying of every protest for the non-payment of a promissory note, or for the non-payment or non-acceptance of a bill of exchange, order, draft, or check, two dollars; for drawing and serving every notice of the non-payment of a promissory note, or the non-payment or non-acceptance of a bill of exchange, order, draft, or check, when personal service is made, two dollars; but when service is made by depositing such notice in the post-office, fifty cents; for recording every protest, one dollar; for drawing an affidavit or other paper from which provision is not herein made, for each folio of one hundred words, twenty cents; for copies of affidavits or other papers, for every folio of one hundred words, twenty cents; for taking an acknowledgment of a deed or other instrument, one dollar for the first, and fifty cents for each subsequent signature; for administering an oath or affirmation, fifty cents.

Fees of the County Recorder.

SEC. 7. For recording any instrument, paper, or notice, and for copies of any records, papers, or notices, when required, for every folio, twenty cents; for noting any instrument recorded, the time when, and the place where recorded, thirty cents; for filing every notice or other paper, when required, and entering thereon a minute of the time filed, thirty cents; for making in the index the several entries of the instruments, papers, and notices required by law to be indexed, for every such instrument, paper, and notice, fifty cents; for every certificate attached to copies of records and papers in his office, when such copies are required, one dollar; for every entry of a discharge of a mortgage on the margin of the record, one dollar; for searching records and files in his office for each year for which the search is made, fifty cents; for recording any instrument, paper, or notice in the Spanish language, and for copies of such instruments, papers, and notices, for every folio, fifty cents; for taking the acknowledgment or proof of any instrument, paper, or notice, which may be by law recorded, one dollar for the first signature, and fifty cents for every other; for recording the plat of any town or city, such price as may be agreed upon between the parties, not exceeding twenty dollars.

Fees of Commissioners to take Testimony.

SEC. 8. For taking depositions, for each folio, twenty cents; for administering an oath or affirmation, fifty cents; for certificate to the deposition, one dollar.

The Fees of Sheriffs.

SEC. 9. For serving a summons or any other process by which an action or proceeding is commenced, on each defendant, two dollars; for travelling in making such service, per mile, thirty cents, to be computed in all cases from the court-house of the county; for taking a bond or undertaking in any case in which he is authorized to take the same, two dollars; for a certified copy thereof, when requested, one dollar; for a copy of any writ, process, or other paper, when demanded or required by law, for each folio, twenty cents; for serving a notice in an action or proceeding, one dollar; for serving a subpœna, for each witness summoned, one dollar; and thirty cents for each mile actually travelled, in going only, but when two or more witnesses live in the same direction, travelling fees shall be charged only for the most distant; for serving an attachment on property, or levying an execution, or executing an order for arrest, or for the detention or delivery of personal property, five dollars; advertising property for sale on execution, or under any judgment or order of sale, two dollars; for making the money upon the execution, for the first five thousand dollars, five per cent.; for all above five thousand dollars, three per cent. The fees herein allowed for the levy of an execution, and for advertising, and for making or collecting the money on an execution, shall be collected from the defendants, by virtue of such execution, in the same manner as the sum therein directed to be made; for drawing and executing a deed pursuant to a sale of real estate, four dollars, to be paid by the grantee, who shall also pay two dollars for the acknowledgment of the deed; serving a writ of possession or restitution, putting any person entitled into possession of premises and removing the occupants, five dollars; and the same compensation for mileage as herein allowed for other writs; summoning a jury in any case, five dollars; attending on same, two dollars; bringing up a prisoner on *habeas corpus* to testify or answer in any court, or for examination as to the cause of his arrest and detention, three dollars; and for travelling each mile from the jail, thirty cents; attending before any officer with a prisoner, for the purpose of having him surrendered in exoneration of his bail, or attending to receive a prisoner so surrendered, who was not committed at the time, and receiving such prisoner into custody, in either case, three dollars; for serving attachment upon any ship, boat, or vessel, in proceedings to enforce any lien thereon created by law, five dollars, with such further compensation for his trouble and expense in taking possession of, and preserving the same, as the officer issuing the warrant shall certify to be reasonable; for selling any ship, boat, or vessel, or tackle, apparel, and furniture thereof so attached, and for advertising such sale, the same fees as for sales on execution; for any services which may be rendered by a constable, the same fees which are allowed by law for such services to a constable; for attending in person, or by deputy, the supreme court, for each day, five dollars; to be allowed by the board of auditors, on the certificate of the clerk, and paid out of the Territorial treasury.

Fees of Coroners.

SEC. 10. For all services rendered by them when acting as sheriffs, the same fees which are allowed to sheriffs for similar services.

Fees to Constables.

SEC. 11. For serving a citation, summons, or other process by which a suit shall be commenced, one dollar; on all sums made on execution, to be charged against the defendant in the execution, five per cent. For all other services, the same fees as are allowed to sheriffs for similar services.

Fees to Justices of the Peace.

SEC. 12. For filing every paper required to be filed, twenty-five cents; for issuing a citation, summons, or other process by which a suit shall be commenced, fifty cents; for entering a case upon his docket, fifty cents; for a subpœna, to each witness, twenty-five cents; administering oath to witness, twenty-five cents; for taking and certifying an oath, fifty cents; for issuing a writ of attachment, one dollar; entering any order or judgment in a case, for each folio, fifty cents; for taking and approving any bond directed by law to be taken or approved by him, one dollar; swearing a jury, fifty cents; taking depositions, per folio, twenty cents; for certified copy of judgment or of any order or paper on file in his office, forty cents; entering satisfaction of a judgment, fifty cents; entering amicable suit without process, one dollar; transcript of judgment, fifty cents; issuing commission to take testimony, one dollar; issuing a *supersedeas* to an execution, fifty cents; making up transcript and returning papers on appeal, two dollars; issuing a search warrant, one dollar; issuing an execution, fifty cents; for celebrating a marriage and returning a certificate thereof to the recorder, three dollars.

Fees of Witnesses.

SEC. 13. Attending to any suit or proceeding, for each day, two dollars; for travelling at the rate of thirty cents per mile in coming to the place of attendance, to be estimated from the residence of witness; but this section shall not be construed as allowing any fees to witnesses in criminal actions. No person shall be obliged to attend as a witness in a civil action, tried without the county in which he resides, nor within the county, unless his fees for attendance have been tendered to him, or he shall not have demanded the same.

Fees of Jurors.

SEC. 14. For the trial of each cause, one dollar; which shall be paid by the party in whose favor the verdict is rendered before the same shall be entered. No fees shall be allowed to jurors in criminal actions.

SEC. 15. If in any trial before any court, the jury be from any cause discharged without finding verdict, the fees of the jurors shall be paid by the

plaintiff; but may be recovered back as costs if he afterwards obtain judgment; until they are paid, no further proceedings shall be allowed in the action.

Miscellaneous Provisions.

SEC. 16. Every officer whose fees are herein ascertained, shall publish and set up in his office a fair table of his fees, according to this chapter, within six months after the passage thereof, in some conspicuous place for the inspection of all persons who have business in his office, upon pain of forfeiting for each day a sum not exceeding twenty dollars, which may be recovered by any person by action before any justice of the peace of the same county.

SEC. 17. The fees allowed by this chapter shall be payable at the time the service is rendered; and any officer, where it is not otherwise expressly provided by law, may refuse to perform any service in any suit or proceeding in which there are any fees due (criminal proceedings excepted) from the persons applying, until such fees are paid.

SEC. 18. When by law any publication is required to be made by any officer of any writ, process, notice, order, or other paper, the costs of such publication shall be first tendered by the party for whom such process or order was granted, before the officer shall be compelled to make publication thereof.

SEC. 19. If any clerk, sheriff, justice of the peace, or constable, shall not have received any fees which may be due him for services rendered in any suit or proceeding, he may have execution thereof in his own name against the party from whom they are due, to be issued from the court in which the action is pending.

SEC. 20. The secretary of the Territory, treasurer, and attorney-general, shall be authorized to require searches in the respective offices of each other, and in the offices of the clerk of the supreme court, of the several district courts, of the board of county commissioners, or county recorders, for any papers, records, or documents necessary to the discharge of the duties of their respective offices, and to require copies thereof, and extracts therefrom, without the payment of any fee or charge whatever.

SEC. 21. The term folio, when used as a measure for computing fees or compensation, shall be construed to mean one hundred words, counting every figure necessarily used as a word; and any portion of a folio, when in the whole draft or paper there shall not be a complete folio, and when there shall be any excess over the last folio, shall be computed as a folio.

SEC. 22. No attorney or counsellor-at-law in any cause shall be allowed any fee for attending as a witness in such cause.

SEC. 23. Every officer, upon receiving any fees for any official duty or service, shall, if required by the person paying the same, make out in writing and deliver to such person, particular account of such fees, specifying for what they respectively accrued—and shall receipt the same; and if he refuse or neglect to do so, he shall be liable to the party paying the same for three times the amount paid.

SEC. 24. No fee shall be charged by any officer for administering the oath of office.

SEC. 25. When a fee is allowed to one officer, the same fee shall be allowed to the other officers for the performance of the same services, when such officers are by law authorized to perform such services, and the compensation is not specially fixed.

SEC. 26. The attorney-general, or any public prosecutor, is authorized to cause subpœnas to be issued, and compel the attendance of witnesses on behalf of the Territory, without paying or tendering fees in advance; and any witness failing or neglecting to attend, after being served with a subpœna, may be proceeded against, and shall be liable in the same manner as provided by law in other cases, when fees have been tendered or paid.

SEC. 27. The clerk of any court at which any witness shall have attended on behalf of the Territory in a civil action, shall give to such witness a certificate of travel and attendance, which shall entitle him to receive the same from the county treasurer.

SEC. 28. The provisions of the two preceding sections of this chapter shall extend to all actions and proceedings brought in the name of the attorney-general, or any person or persons for the benefit of the Territory.

SEC. 29. For all services required by law to be performed by any clerk, sheriff, or coroner, for which no compensation is provided by this chapter or other law, such fees shall be allowed as shall from time to time be established by the supreme or district court by general rules, corresponding as nearly as may be to the rates herein specified.

CHAPTER LVIII.

Of Offices and Officers.

SEC. 1. There shall be one Territorial treasurer, one attorney-general for the Territory, and one superintendent of public instruction, whose several duties shall be prescribed by law, and their compensation fixed by the Legislature.

SEC. 2. The Territorial treasurer and attorney-general shall be nominated by the governor and appointed by and with the advice and consent of the Legislative Council, and shall each hold his office for the term of two years.

SEC. 3. That at any time after the first day of January, one thousand eight hundred and sixty-six, the governor of this Territory shall be and he hereby is authorized to appoint, if he believes the public interest requires it, a superintendent of public instruction, whose duties and compensation shall be prescribed by law.

SEC. 4. In each county there shall be elected at the general election next to be holden, and at each general election every two years thereafter, one

county treasurer, one sheriff, one county recorder, and one coroner, who shall severally hold their offices for the term of two years, and shall give such security, discharge such duties, and receive such compensation as shall be fixed by law.

SEC. 5. There shall be appointed for each county by the governor, by and with the advice and consent of the Legislative Council, one judge of probate, who shall hold his office for four years, and receive such annual salary or fee as the Legislature shall fix by law. His jurisdiction and duties shall be prescribed by law.

SEC. 6. The term of all officers shall expire on the last day of November in the year in which such office terminates, and all officers elected or appointed for a full term shall commence their duties on the first day of December next after the terms of their predecessors shall have expired; and all officers elected or appointed to fill any vacancy shall hold such office only until the expiration of the regular term which the person whose vacancy is so filled would have held the same.

SEC. 7. All officers elected or appointed (except members of the Legislature) for a full term, shall take and file the oath of office and give the bonds required by law before entering on the duties of their office, and may take such oath and give such bonds at any time within twenty days before the commencement of their term of office respectively; all persons appointed to fill a vacancy shall take such oath and give such bonds within ten days after receiving notice of their appointment.

SEC. 8. Nothing in this chapter contained shall be construed to affect the provisions of section two of chapter sixty-one of this code, entitled, "Of Miscellaneous Provisions," so far as regards officers already appointed or to be appointed under the provisions of said section two.

CHAPTER LIX.

Of the Prohibition of Gambling.

SEC. 1. There shall be assessed and collected in the manner prescribed by law in the case of other licenses, a license tax of twenty-five dollars per month, to be collected monthly on each gaming table or apparatus of any kind whatever, such as faro, monte, pass faro, pass monte, rondeau, roulette, twenty-one, dice, red and black, or rouge et noir, lansquenette, or any other banking game of whatever name, which license shall be issued in the manner provided by law in the case of other licenses.

SEC. 2. That if any proprietor, superintendent, clerk, agent, or servant of any house or place where spirituous or malt liquors are sold, shall permit any unlicensed games to be played either with cards, dice, or with any device or substitute for the same, he shall be deemed guilty of misdemeanor, and on conviction thereof shall be fined in any sum not less than fifty nor more than three hundred dollars, and be imprisoned in the county jail until the same is paid: Provided, such imprisonment shall not exceed ninety days.

SEC. 3. If any unlicensed person shall keep a gambling table or apparatus of any kind whatever, such as faro, monte, pass faro, pass monte, twenty-one, or any other banking game or device, or substitute for the same, by whatever name known, on conviction thereof he shall be fined in any sum not less than twenty-five nor more than one hundred and fifty dollars, with costs of prosecution.

SEC. 4. That any person playing or betting at any such unlicensed table, or on any of the unlicensed games mentioned in the preceding section, upon conviction thereof shall be fined in any sum not less than ten nor more than fifty dollars, and under the provisions of the preceding section of this chapter it shall be sufficient proof that the accused did commit one or more of the acts therein mentioned, without being necessary to prove that money or anything of value was lost or won by any person.

SEC. 5. If any person shall play with any minor under the age of twenty-one years at any of the games mentioned in the preceding sections of this chapter, or permit such minor to play upon or with any gaming implements he may have in his possession or under his control, he shall be deemed guilty of a misdemeanor, and on conviction thereof shall be fined in any sum not exceeding three hundred dollars, and imprisonment in the county jail not exceeding three months; and if any person by any such gaming or device shall win and receive from any such minor any money or anything of value, the attorney-general on being informed thereof shall immediately prosecute such person in the name of the Territory for the amount of such money, or the value of such thing, with all costs of suit, and the execution issued upon any such judgment shall authorize the imprisonment of the defendant for the period of ninety days in the county jail in case such judgment be not paid.

SEC. 6. If any public officer shall be convicted under the provisions of the second or fourth sections of this chapter, in addition to the penalty by said sections imposed, the court shall declare his office vacant, and the same shall be immediately filled agreeably to the provisions of law.

SEC. 7. All moneys collected under the provisions of this chapter shall be immediately paid to the treasurer of the proper county.

CHAPTER LX.

Of Estray Animals.

SEC. 1. Any citizen, resident householder, in any county in this Territory, on finding an estray horse, mare, mule, jack or jenny, or neat cattle, upon his farm or premises, or on the public lands, who shall desire to take up the same, shall at any time within sixty days from the finding of the same go to the justice of the peace residing nearest to the neighborhood in which the animals were found, and make oath that he has made diligent inquiry throughout his neighborhood to ascertain the ownership of such estrays, and that he has also put up ten days previously a written notice in one or more of the most public places in his county, setting forth all the information in his possession concerning the said animals, and embracing a description of the marks and brands thereof, and he shall also at the same time make oath that the marks and brands of said animals have not been altered since they came into his possession, and that the owner or owners are unknown to him.

SEC. 2. At the time the taker-up appears before the justice as aforesaid, the justice shall appoint two disinterested appraisers, who are resident householders of the county, to appraise and describe such animal or animals.

SEC. 3. The appraisers so appointed shall as soon as practicable make out a detailed description of such animals, stating the marks, brands, color, supposed age, and value of each animal, which statement shall be signed by the appraisers and sworn to before the justice appointing them.

SEC. 4. It shall be the duty of said justice immediately to record in a book to be kept by him for that purpose, a statement of the taking up as aforesaid, with the description and appraisement, as sworn to by the appraisers.

SEC. 5. The justice shall, within twenty days, if the estrays have not been previously claimed and proven by the owner, make out and transmit a certified copy of the entry in his estray book as aforesaid to the county recorder, which shall immediately be by him recorded in a book to be kept for that purpose. Said record, and also the justice's book, shall at all proper times be open for inspection by any person, without charge or fee.

SEC. 6. If the owner of any estray animal, posted as aforesaid, shall within six months from the time the same was posted, appear and prove his right thereto before the justice of the peace, the justice shall make an order that he have restitution of the animals so proven, upon his paying the costs as hereinafter provided (in section 15).

SEC. 7. If the owner of any lost or stray animal shall not appear and prove his property therein within six months after the same is posted, he shall forfeit his right thereto, and the property in such animal shall be vested in the taker-up, upon his paying into the county treasury the one-half of the appraised value thereof, as fixed by the appraisers as aforesaid.

SEC. 8. No person taking up an animal under this chapter shall sell or dispose of the same in any manner, or remove the same from the county in which

it was posted, until after the expiration of six months from the posting, and until the payment of the one-half appraised value into the county treasury, and any person so offending shall be deemed guilty of larceny, and punished accordingly.

SEC. 9. If at the expiration of six months from the taking up of any estray under this chapter, the justice before whom the case was posted, or his successor in office, has good reason to believe that the taker-up has the property and has not paid into the county treasury the one-half appraised value as herein required, it is made the special duty of said justice to issue a notice to the delinquent, requesting him to appear before the justice on a day specified, and show cause, if any he can, why judgment should not be entered against him in favor of the county for the sum. Such notice may be delivered to the sheriff or any constable of the proper township or county, and by him served on the party. If no sufficient cause be shown, the justice shall enter judgment against the delinquent for the amount due the county, which judgment shall be a lien upon all the property, real and personal, belonging to the delinquent from the time the same is entered.

SEC. 10. It shall be the duty of every justice of the peace before whom statements shall be made concerning estrays, as in section first of this chapter, immediately after the receipt of the statement, to cause to be published in the newspaper printed in this Territory nearest to his office, three weekly insertions of said statement and description of marks and brands of such estray.

SEC. 11. The owner of any estray animal which has been taken up shall not be permitted to take, lead, or drive the same from the premises or possession of the person legally possessed thereof, until proven and the charges paid, and any person knowingly or wilfully violating the provisions of this section shall be subject to all the penalties that he would be subject to under the statute law, provided he had no claim to such animal.

SEC. 12. If any estray animal die or escape from the possession of the taker-up, before the expiration of six months from the taking up, he shall not be held liable in any manner on account of such animal, provided the death be not caused by maltreatment, or the escape be not caused by neglect on the part of the taker-up.

SEC. 13. All money paid into the county treasury in accordance with section seven of this chapter, shall be kept in separate account by the treasurer, and safely held in trust for the space of three months after it is so paid in, to be paid over to the true owner of the estray, upon such owner producing to the treasurer the certificate of the proper justice that said owner had made satisfactory proof of ownership within the time prescribed in section seven of this chapter, the treasurer retaining five per cent. of said money as his percentage.

SEC. 14. All moneys paid into the county treasury under the provisions of this chapter, if not legally withdrawn as provided in section nine, shall become a part and belong to the county school fund, and be drawn from the county treasury on the warrant of the proper officer, and shall be exclusively appropriated to the county school fund, and for no other purpose.

SEC. 15. In all cases where any services are performed by any officer or

officers under this chapter, their fees shall be allowed as follows: To the justice for all services connected with the posting of the animal or animals, which shall include the transcript to the recorder, all expenses he may incur in printing, two dollars and fifty cents. To the county recorder for recording transcript and all other services, two dollars and fifty cents. The expense for printing and said fees shall be paid by the taker-up. Said taker-up shall be allowed five dollars for taking up such animal or animals taken up at the same time, and two dollars per head per month for the keeping of the same, provided the same be of cattle or of the horse kind, and twenty-five cents provided the same be sheep, goats, or hogs.

CHAPTER LXI.

Of Miscellaneous Provisions.

Be it enacted by the Legislative Assembly of the Territory of Arizona:

SEC. 1. All laws, customs, ordinances, and decrees of the Mexican Republic; all laws, customs, ordinances, and decrees of the kingdom of Spain; and all legislative enactments of the Territory of New Mexico, now or heretofore in force in this Territory, are hereby repealed; but this repeal shall not affect any rights acquired, or proceedings had, under and by virtue of any such laws, customs, ordinances, decrees, or legislative enactments; and all proceedings commenced and undetermined thereunder, may be continued and conducted in conformity with the provisions of this code, as nearly as may be.

SEC. 2. All offices created by the provisions of this code, shall be filled by appointment by the governor, unless otherwise therein provided; such officers and those already appointed, shall continue to hold their offices, unless sooner removed agreeably to law, until the last day of November, one thousand eight hundred and sixty-five. The successors of all officers made elective by the provisions of this code, shall be elected at the first general election to be holden on the first Wednesday of September, one thousand eight hundred and sixty-five.

SEC. 3. The salary or compensation of all officers heretofore appointed shall commence from the date of their appointment; and all such salaries remaining unpaid, shall be paid quarterly agreeably to the provisions of this code, and at the rate therein provided. The fees of all officers shall be after the rate established by this code, after the time the same shall take effect, and in all cases where services have been heretofore rendered by any officer, and no provision of law existed for compensation therefor, the board of county commissioners or Territorial auditors, as the case may be, may audit and pay therefor such amount as they shall deem just and reasonable.

SEC. 4. All public moneys heretofore collected or received by any public officer, and remaining unappropriated in the hands of such officer or any other person, shall be immediately paid, one-half to the Territorial treasurer for Territorial purposes, and one-half to the county treasurer of the proper

county for county purposes; and in case of neglect or refusal so to pay such public moneys, the attorney-general shall proceed in the name of the Territory immediately to collect such money, and when collected to pay over the same, as in this section provided.

SEC. 5. The preamble, bill of rights, and laws contained in this code, and all other Territorial enactments and resolves which shall be published by authority of the Legislative Assembly, shall be taken and deemed to be, and may be read as the law of the land in all courts and places, without any other or further authentication or proof whatever.

SEC. 6. All laws and resolves published in the Territorial paper by order of the Legislative Assembly, may be read therefrom without further authentication or proof.

SEC. 7. The common law of England, so far as it is not repugnant to, or inconsistent with the constitution and laws of the United States, or the bill of rights or laws of this Territory, is hereby adopted, and shall be the rule of decision in all the courts of this Territory.

SEC. 8. All recognizances, bonds, obligations, and all other instruments entered into or executed before the adoption of this code, to the Territory or to any public officer or body before the complete organization of the departments of government under this code, shall remain binding and valid, and the rights and liabilities upon the same shall continue and may be prosecuted as provided by law; and all crimes, misdemeanors, and penal actions shall be prosecuted, tried, and punished as though no change had taken place, until otherwise provided by law; and the jurisdiction of all suits and proceedings in any of the courts of this Territory, or before any officer or body, shall not be affected by such change, but the same may proceed and be determined agreeably to the provisions of law.

SEC. 9. When it is impossible or difficult, for any cause, to procure a sheriff to serve any process or other paper which he might or could serve, or when the sheriff or deputy shall refuse or neglect to serve the same, or shall be a party to any suit, it shall be lawful for the United States marshal, or any of his deputies, to serve the same, and when so served it shall have the same force and effect as if served by said sheriff; and said marshal or his deputies shall receive therefor the same fees as the sheriff for like services. This section shall not change the mode of address of such process or other paper, and the return of such marshal or his deputies shall have the same effect as if served by said sheriff.

SEC. 10. As soon after the adoption of this code as may be, the secretary of this Territory shall cause to be published in the Territorial paper, and in supplements thereto, the several chapters designated and numbered to take immediate effect; the said secretary shall file in his office and carefully preserve at least one copy of each paper and supplements in which any publication in this and the preceding section provided for shall be made, with an affidavit thereto attached, made by some person personally knowing the fact, stating the number of the chapter or chapters, and the title or titles thereof therein published, and the true date of such publication. A certified copy of such affidavit made by said secretary, and attached to any such Territorial paper or supplement of the same number or date, and containing the publication of the same laws, as the one

so required to be filed, shall be evidence in all courts and places within this Territory of the date of the publication of such laws; the said secretary, at the expense of the Territory, shall furnish a copy of each of such paper or supplement containing such laws to each member and officer of the Legislature, to the governor and Territorial officers, each judge of probate, county recorder, county treasurer, sheriff, clerk of courts of record, and judges of the supreme court.

SEC. 11. The bill of rights, and chapters numbered from one to sixty-one consecutively, and described in the preceding chapters, shall form, and are hereby declared to be a code of laws for the Territory of Arizona, to be known and designated as "The Howell Code." In the necessary legislative action thereon, its passage by the Legislature, its signing, authentication, and approval by the governor, the said "code" shall be taken, acted upon, deemed, and treated as one entire law, and shall thereafter remain in full force and effect until altered, modified, and repealed by the authority of the Legislative Assembly of the Territory of Arizona.

SEC. 12. All laws passed at the present session of the Legislature, where no other time is fixed for their taking effect, shall take effect and be in force from and after the first day of January, 1865. Provided nothing contained in this action shall be construed to repeal any laws heretofore in existence in this Territory, until the laws inconsistent therewith, passed at the present session of the Legislature, shall take effect and be in force; excepting, however, that all the provisions of this code, and every part thereof, shall take effect and be in force from and after the twentieth day of April, 1865.

Approved, November 10, 1864.
JOHN N. GOODWIN.

W. CLAUDE JONES,
Speaker of the House of Representatives.

COLES BASHFORD,
President of the Council.

APPENDIX.

CONTAINING:

I. THE CONSTITUTION OF THE UNITED STATES, WITH THE ARTICLES IN ADDITION TO, AND AMENDMENT THEREOF.

II. THE TREATIES WITH MEXICO, VIZ.:

1. TREATY OF LIMITS, 1828 AND 1831.
2. TREATY OF AMITY, COMMERCE, AND NAVIGATION, 1831.
3. CONVENTION FOR A SECOND ADDITIONAL ARTICLE TO THE TREATY OF LIMITS, 1835-36.
4. CONVENTION FOR THE ADJUSTMENT OF CLAIMS OF CITIZENS OF THE UNITED STATES, 1839.
5. TREATY OF PEACE, FRIENDSHIP, LIMITS, AND SETTLEMENT, 1848.
6. THE GADSDEN TREATY, 1854.
7. EXTRADITION TREATY, 1862.
8. POSTAL CONVENTION, 1862.

CONSTITUTION OF THE UNITED STATES OF AMERICA.

We the people of the United States, in order to form a more perfect union, establish justice, insure domestic tranquillity, provide for the common defence, promote the general welfare, and secure the blessings of liberty to ourselves and our posterity, do ordain and establish this Constitution for the United States of America.

ARTICLE I.

Section 1.

All legislative powers herein granted shall be vested in a Congress of the United States, which shall consist of a Senate and House of Representatives.

Section 2.

1. The House of Representatives shall be composed of members chosen every second year by the people of the several States, and the electors in each State shall have the qualifications requisite for electors of the most numerous branch of the State Legislature.

2. No person shall be a representative who shall not have attained to the age of twenty-five years, and been seven years a citizen of the United States, and who shall not, when elected, be an inhabitant of that State in which he shall be chosen.

3. Representatives and direct taxes shall be apportioned among the several States which may be included within this Union, according to their respective numbers, which shall be determined by adding to the whole number of free persons, including those bound to service for a term of years, and excluding Indians not taxed, three-fifths of all other persons. The actual enumeration shall be made within three years after the first meeting of the Congress of the United States, and within every subsequent term of ten years, in such manner as they shall by law direct. The number of representatives shall not exceed one for every thirty thousand, but each State shall have at least one representative; and until such enumeration shall be made, the State of New Hampshire shall be entitled to choose three, Massachusetts eight, Rhode Island and Providence Plantations one, Connecticut five, New York six, New Jersey four, Pennsylvania eight, Delaware one, Maryland six, Virginia ten, North Carolina five, South Carolina five, and Georgia three.

4. When vacancies happen in the representation from any State, the executive authority thereof shall issue writs of election to fill such vacancies.

5. The House of Representatives shall choose their speaker and other officers, and shall have the sole power of impeachment.

Section 3.

1. The Senate of the United States shall be composed of two senators from each State, chosen by the Legislature thereof, for six years; and each senator shall have one vote.

2. Immediately after they shall be assembled in consequence of the first election, they shall be divided as equally as may be into three classes. The seats of the senators of the first class shall be vacated at the expiration of the second year, of the

second class at the expiration of the fourth year, and of the third class at the expiration of the sixth year, so that one-third may be chosen every second year; and if vacancies happen, by resignation or otherwise, during the recess of the Legislature of any State, the executive thereof may make temporary appointments until the next meeting of the Legislature, which shall then fill such vacancies.

3. No person shall be a senator who shall not have attained to the age of thirty years, and been nine years a citizen of the United States, and who shall not, when elected, be an inhabitant of that State for which he shall be chosen.

4. The Vice-President of the United States shall be president of the Senate, but shall have no vote, unless they be equally divided.

5. The Senate shall choose their other officers, and also a president *pro tempore*, in the absence of the Vice-President, or when he shall exercise the office of President of the United States.

6. The Senate shall have the sole power to try all impeachments. When sitting for that purpose, they shall be on oath or affirmation. When the President of the United States is tried, the Chief-Justice shall preside: And no person shall be convicted without the concurrence of two-thirds of the members present.

7. Judgment in cases of impeachment shall not extend further than to removal from office, and disqualification to hold and enjoy any office of honor, trust, or profit under the United States; but the party convicted shall nevertheless be liable and subject to indictment, trial, judgment, and punishment, according to law.

Section 4.

1. The times, places, and manner of holding elections for senators and representatives, shall be prescribed in each State by the Legislature thereof; but the Congress may at any time by law make or alter such regulations, except as to the places of choosing senators.

2. The Congress shall assemble at least once in every year, and such meeting shall be on the first Monday in December, unless they shall by law appoint a different day.

Section 5.

1. Each House shall be the judge of the elections, returns, and qualifications of its own members, and a majority of each shall constitute a quorum to do business; but a smaller number may adjourn from day to day, and may be authorized to compel the attendance of absent members, in such manner and under such penalties as each House may provide.

2. Each House may determine the rules of its proceedings, punish its members for disorderly behavior, and, with the concurrence of two-thirds, expel a member.

3. Each House shall keep a journal of its proceedings, and from time to time publish the same, excepting such parts as may, in their judgment, require secrecy; and the yeas and nays of the members of either House on any question shall, at the desire of one-fifth of those present, be entered on the journal.

4. Neither House, during the session of Congress, shall, without the consent of the other, adjourn for more than three days, nor to any other place than that in which the two Houses shall be sitting.

Section 6.

1. The senators and representatives shall receive a compensation for their services, to be ascertained by law, and paid out of the treasury of the United States. They shall in all cases, except treason, felony, and breach of the peace, be privileged from arrest during their attendance at the session of their respective Houses, and in going to and returning from the same; and for any speech or debate in either House, they shall not be questioned in any other place.

2. No senator or representative shall, during the time for which he was elected, be appointed to any civil office under the authority of the United States, which shall have been created, or the emoluments whereof shall have been increased during such

time; and no person holding any office under the United States shall be a member of either House during his continuance in office.

Section 7.

1. All bills for raising revenue shall originate in the House of Representatives; but the Senate may propose or concur with amendments as on other bills.

2. Every bill, which shall have passed the House of Representatives and the Senate, shall, before it become a law, be presented to the President of the United States; if he approve he shall sign it, but if not he shall return it, with his objections, to that House in which it shall have originated, who shall enter the objections at large on their journal, and proceed to reconsider it. If, after such reconsideration, two-thirds of that House shall agree to pass the bill, it shall be sent, together with the objections, to the other House, by which it shall likewise be reconsidered, and if approved by two-thirds of that House, it shall become a law. But in all such cases the votes of both Houses shall be determined by yeas and nays, and the names of the persons voting for and against the bill shall be entered on the journal of each House respectively. If any bill shall not be returned by the President within ten days (Sundays excepted) after it shall have been presented to him, the same shall be a law, in like manner as if he had signed it, unless the Congress, by their adjournment, prevent its return, in which case it shall not be a law.

3. Every order, resolution, or vote, to which the concurrence of the Senate and House of Representatives may be necessary (except on a question of adjournment), shall be presented to the President of the United States; and before the same shall take effect, shall be approved by him, or being disapproved by him, shall be repassed by two-thirds of the Senate and House of Representatives, according to the rules and limitations prescribed in the case of a bill.

Section 8.

The Congress shall have power:

1. To lay and collect taxes, duties, imposts and excises, to pay the debts and provide for the common defence and general welfare of the United States; but all duties, imposts, and excises shall be uniform throughout the United States.

2. To borrow money on the credit of the United States.

3. To regulate commerce with foreign nations, and among the several States, and with the Indian tribes.

4. To establish a uniform rule of naturalization, and uniform laws on the subject of bankruptcies throughout the United States.

5. To coin money, regulate the value thereof, and of foreign coin, and fix the standard of weights and measures.

6. To provide for the punishment of counterfeiting the securities and current coin of the United States.

7. To establish post-offices and post roads.

8. To promote the progress of science and useful arts, by securing for limited times to authors and inventors the exclusive right to their respective writings and discoveries.

9. To constitute tribunals inferior to the Supreme Court.

10. To define and punish piracies and felonies committed on the high seas, and offences against the law of nations.

11. To declare war, grant letters of marque and reprisal, and make rules concerning captures on land and water.

12. To raise and support armies, but no appropriation of money to that use shall be for a longer term than two years.

13. To provide and maintain a navy.

14. To make rules for the government and regulation of the land and naval forces.

15. To provide for calling forth the militia to execute the laws of the Union, suppress insurrections, and repel invasions.

16. To provide for organizing, arming, and disciplining the militia, and for governing such part of them as may be employed in the service of the United States,

reserving to the States respectively the appointment of the officers, and the authority of training the militia according to the discipline prescribed by Congress.

17. To exercise exclusive legislation in all cases whatsoever, over such district (not exceeding ten miles square) as may, by cession of particular States, and the acceptance of Congress, become the seat of the government of the United States, and to exercise like authority over all places purchased by the consent of the Legislature of the State in which the same shall be, for the erection of forts, magazines, arsenals, dock-yards, and other needful buildings. And

18. To make all laws which shall be necessary and proper for carrying into execution the foregoing powers, and all other powers vested by this Constitution in the government of the United States, or in any department or officer thereof.

Section 9.

1. The migration or importation of such persons as any of the States now existing shall think proper to admit, shall not be prohibited by the Congress prior to the year one thousand eight hundred and eight, but a tax or duty may be imposed on such importation, not exceeding ten dollars for each person.

2. The privilege of the writ of *habeas corpus* shall not be suspended, unless when in cases of rebellion or invasion the public safety may require it.

3. No bill of attainder or *ex post facto* law shall be passed.

4. No capitation or other direct tax shall be laid, unless in proportion to the census or enumeration hereinbefore directed to be taken.

5. No tax or duty shall be laid on articles exported from any State.

6. No preference shall be given by any regulation of commerce or revenue to the ports of one State over those of another: nor shall vessels bound to, or from, one State, be obliged to enter, clear, or pay duties in another.

7. No money shall be drawn from the treasury but in consequence of appropriations made by law; and a regular statement and account of the receipts and expenditures of all public money shall be published from time to time.

8. No title of nobility shall be granted by the United States; and no person holding any office of profit or trust under them, shall, without the consent of the Congress, accept of any present, emolument, office, or title, of any kind whatever, from any king, prince, or foreign state.

Section 10.

1. No State shall enter into any treaty, alliance, or confederation; grant letters of marque and reprisal; coin money; emit bills of credit; make anything but gold and silver coin a tender in payment for debts; pass any bill of attainder, *ex post facto* law, or law impairing the obligation of contracts, or grant any title of nobility.

2. No State shall, without the consent of the Congress, lay any imposts or duties on imports or exports, except what may be absolutely necessary for executing its inspection laws: and the net produce of all duties and imposts, laid by any State on imports or exports, shall be for the use of the treasury of the United States; and all such laws shall be subject to the revision and control of the Congress.

3. No State shall, without the consent of Congress, lay any duty of tonnage, keep troops or ships of war in time of peace, enter into any agreement or compact with another State or with a foreign power, or engage in war unless actually invaded, or in such imminent danger as will not admit of delay.

ARTICLE II.

Section 1.

1. The executive power shall be vested in a President of the United States of America. He shall hold his office during the term of four years, and, together with the Vice-President, chosen for the same term, be elected as follows:

2. Each State shall appoint, in such manner as the Legislature thereof may direct,

a number of electors, equal to the whole number of senators and representatives to which the State may be entitled in the Congress: but no senator or representative, or person holding an office of trust or profit under the United States, shall be appointed an elector.

3. The Congress may determine the time of choosing the electors, and the day on which they shall give their votes; which day shall be the same throughout the United States.

4. No person except a natural-born citizen, or a citizen of the United States at the time of the adoption of this Constitution, shall be eligible to the office of President: neither shall any person be eligible to that office who shall not have attained to the age of thirty-five years, and been fourteen years a resident within the United States.

5. In case of the removal of the President from office, or of his death, resignation, or inability to discharge the powers and duties of the said office, the same shall devolve on the Vice-President, and the Congress may by law provide for the case of removal, death, resignation, or inability, both of the President and Vice-President, declaring what officer shall then act as President, and such officer shall act accordingly, until the disability be removed, or a President shall be elected.

6. The President shall, at stated times, receive for his services a compensation, which shall neither be increased nor diminished during the period for which he shall have been elected, and he shall not receive within that period any other emolument from the United States, or any of them.

7. Before he enter on the execution of his office, he shall take the following oath or affirmation:—

"I do solemnly swear (or affirm) that I will faithfully execute the office of President of the United States, and will, to the best of my ability, preserve, protect, and defend the Constitution of the United States."

Section 2.

1. The President shall be commander-in-chief of the army and navy of the United States, and of the militia of the several States when called into the actual service of the United States; he may require the opinion, in writing, of the principal officer in each of the executive departments, upon any subject relating to the duties of their respective offices, and he shall have power to grant reprieves and pardons for offences against the United States, except in cases of impeachment.

2. He shall have power, by and with the advice and consent of the Senate, to make treaties, provided two-thirds of the senators present concur; and he shall nominate, and by and with the advice and consent of the Senate, shall appoint ambassadors, other public ministers and consuls, judges of the Supreme Court, and all other officers of the United States whose appointments are not herein otherwise provided for, and which shall be established by law: but the Congress may by law vest the appointment of such inferior officers as they think proper in the President alone, in the courts of law, or in the heads of departments.

3. The President shall have power to fill up all vacancies that may happen during the recess of the Senate, by granting commissions which shall expire at the end of their next session.

Section 3.

He shall from time to time give to the Congress information of the state of the Union, and recommend to their consideration such measures as he shall judge necessary and expedient; he may, on extraordinary occasions, convene both Houses, or either of them, and in case of disagreement between them, with respect to the time of adjournment, he may adjourn them to such time as he shall think proper; he shall receive ambassadors and other public ministers; he shall take care that the laws be faithfully executed, and shall commission all the officers of the United States.

Section 4.

The President, Vice-President, and all civil officers of the United States, shall be

removed from office on impeachment for, and conviction of, treason, bribery, or other high crimes and misdemeanors.

ARTICLE III.

Section 1.

The judicial power of the United States shall be vested in one Supreme Court, and in such inferior courts as the Congress may from time to time ordain and establish. The judges, both of the Supreme and inferior Courts, shall hold their offices during good behavior, and shall, at stated times, receive for their services a compensation, which shall not be diminished during their continuance in office.

Section 2.

1. The judicial power shall extend to all cases, in law and equity, arising under this Constitution, the laws of the United States, and treaties made, or which shall be made, under their authority,—to all cases affecting ambassadors, other public ministers, and consuls;—to all cases of admiralty and maritime jurisdiction;—to controversies to which the United States shall be a party;—to controversies between two or more States;—between a State and citizens of another State;—between citizens of different States,—between citizens of the same State claiming lands under grants of different States, and between a State, or the citizens thereof, and foreign states, citizens, or subjects.

2. In all cases affecting ambassadors, other public ministers and consuls, and those in which a State shall be party, the Supreme Court shall have original jurisdiction. In all the other cases before mentioned, the Supreme Court shall have appellate jurisdiction, both as to law and fact, with such exceptions, and under such regulations as the Congress shall make.

3. The trial of all crimes, except in cases of impeachment, shall be by jury; and such trial shall be held in the State where the said crimes shall have been committed; but when not committed within any State, the trial shall be at such place or places as the Congress may by law have directed.

Section 3.

1. Treason against the United States, shall consist only in levying war against them, or in adhering to their enemies, giving them aid and comfort. No person shall be convicted of treason unless on the testimony of two witnesses to the same overt act, or on confession in open court.

2. The Congress shall have power to declare the punishment of treason, but no attainder of treason shall work corruption of blood, or forfeiture except during the life of the person attainted.

ARTICLE IV.

Section 1.

Full faith and credit shall be given in each State to the public acts, records, and judicial proceedings of every other State. And the Congress may by general laws prescribe the manner in which such acts, records, and proceedings shall be proved, and the effect thereof.

Section 2.

1. The citizens of each State shall be entitled to all privileges and immunities of citizens in the several States.

2. A person charged in any State with treason, felony, or other crime, who shall flee from justice, and be found in another State, shall, on demand of the executive

authority of the State from which he fled, be delivered up, to be removed to the State having jurisdiction of the crime.

3. No person held to service or labor in one State, under the laws thereof, escaping into another, shall, in consequence of any law or regulation therein, be discharged from such service or labor, but shall be delivered up on claim of the party to whom such service or labor may be due.

Section 3.

1. New States may be admitted by the Congress into this Union; but no new State shall be formed or erected within the jurisdiction of any other State; nor any State be formed by the junction of two or more States, or parts of States, without the consent of the Legislatures of the States concerned as well as of the Congress.

2. The Congress shall have power to dispose of and make all needful rules and regulations respecting the Territory or other property belonging to the United States; and nothing in this Constitution shall be so construed as to prejudice any claims of the United States, or of any particular State.

Section 4.

The United States shall guarantee to every State in this Union a republican form of government, and shall protect each of them against invasion; and on application of the Legislature, or of the executive (when the Legislature cannot be convened), against domestic violence.

ARTICLE V.

The Congress, whenever two-thirds of both Houses shall deem it necessary, shall propose amendments to this Constitution, or, on the application of the Legislatures of two-thirds of the several States, shall call a convention for proposing amendments, which, in either case, shall be valid to all intents and purposes, as part of this Constitution, when ratified by the Legislatures of three-fourths of the several States, or by conventions in three-fourths thereof, as the one or the other mode of ratification may be proposed by the Congress: Provided, that no amendment which may be made prior to the year one thousand eight hundred and eight shall in any manner affect the first and fourth clauses in the ninth section of the first article; and that no State, without its consent, shall be deprived of its equal suffrage in the Senate.

ARTICLE VI.

1. All debts contracted and engagements entered into, before the adoption of this Constitution, shall be as valid against the United States under this Constitution, as under the confederation.

2. This constitution, and the laws of the United States which shall be made in pursuance thereof, and all treaties made, or which shall be made, under the authority of the United States, shall be the supreme law of the land; and the judges in every State shall be bound thereby, anything in the constitution or laws of any State to the contrary notwithstanding.

3. The senators and representatives before mentioned, and the members of the several State Legislatures, and all executive and judicial officers, both of the United States and of the several States, shall be bound by oath or affirmation, to support this Constitution; but no religious test shall ever be required as a qualification to any office or public trust under the United States.

ARTICLE VII.

The ratification of the conventions of nine States shall be sufficient for the establishment of this Constitution between the States so ratifying the same.

Done in convention by the unanimous consent of the States present, the seventeenth day of September, in the year of our Lord one thousand seven hundred and eighty-seven, and of the independence of the United States of America the twelfth. In Witness whereof we have hereunto subscribed our names.

GEO. WASHINGTON,
President and Deputy from Virginia.

NEW HAMPSHIRE.

JOHN LANGDON, NICHOLAS GILMAN.

MASSACHUSETTS.

NATHANIEL GORHAM, RUFUS KING.

CONNECTICUT.

WM. SAML. JOHNSON, ROGER SHERMAN.

NEW YORK.

ALEXANDER HAMILTON.

NEW JERSEY.

WIL. LIVINGSTON, DAVID BREARLEY,
WM. PATERSON, JONA. DAYTON.

PENNSYLVANIA.

B. FRANKLIN, THOMAS MIFFLIN,
ROBT. MORRIS, GEO. CLYMER,
THOS. FITZSIMONS, JARED INGERSOLL,
JAMES WILSON, GOUV. MORRIS.

DELAWARE.

GEO. READ, GUNNING BEDFORD, JUN'R,
JOHN DICKINSON, RICHARD BASSETT.
JACO. BROOM,

MARYLAND.

JAMES M'HENRY, DAN. OF ST. THOS. JENIFER.
DANL. CARROLL,

VIRGINIA.

JOHN BLAIR, JAMES MADISON, JR.

NORTH CAROLINA.

WM. BLOUNT, RICH'D DOBBS SPAIGHT.
HU. WILLIAMSON,

SOUTH CAROLINA.

J. Rutledge,
Charles Pinckney,
Charles Cotesworth Pinckney,
Pierce Butler.

GEORGIA.

William Few,
Abr. Baldwin.

Attest: WILLIAM JACKSON, *Secretary.*

ARTICLES IN ADDITION TO, AND AMENDMENT OF, THE CONSTITUTION OF THE UNITED STATES OF AMERICA,

Proposed by Congress, and ratified by the Legislatures of the several States, pursuant to the fifth article of the original Constitution.

ARTICLE I.

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the government for a redress of grievances.

ARTICLE II.

A well regulated militia, being necessary to the security of a free State, the right of the people to keep and bear arms shall not be infringed.

ARTICLE III.

No soldier shall, in time of peace, be quartered in any house, without the consent of the owner, nor in time of war but in a manner to be prescribed by law.

ARTICLE IV.

The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no warrants shall issue but upon probable cause, supported by oathor affirmation, and particularly describing the place to be searched, and the person or things to be seized.

ARTICLE V.

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a grand jury, except in cases arising in the land or naval forces, or in the militia, when in actual service in time of war or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use without just compensation.

ARTICLE VI.

In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the assistance of counsel for his defence.

ARTICLE VII.

In suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved, and no fact tried by a jury shall be otherwise reëxamined in any court of the United States, than according to the rules of the common law.

ARTICLE VIII.

Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted.

ARTICLE IX.

The enumeration in the Constitution of certain rights, shall not be construed to deny or disparage others retained by the people.

ARTICLE X.

The powers not delegated to the United States by the Constitution, nor prohibited to the States, are reserved to the States respectively, or to the people.

ARTICLE XI.

The judicial power of the United States shall not be construed to extend to any suit in law or equity, commenced or prosecuted against one of the United States by citizens of another State, or by citizens or subjects of any foreign state.

ARTICLE XII.

1. The electors shall meet in their respective States, and vote by ballot for President and Vice-President, one of whom, at least, shall not be an inhabitant of the same State with themselves; they shall name in their ballots the person voted for as President, and in distinct ballots the person voted for as Vice-President, and they shall make distinct lists of all persons voted for as President, and of all persons voted for as Vice-President, and of the number of votes for each, which lists they shall sign and certify, and transmit sealed to the seat of the government of the United States, directed to the President of the Senate. The President of the Senate shall, in presence of the Senate and House of Representatives, open all the certificates, and the votes shall then be counted. The person having the greatest number of votes for President shall be the President, if such number be a majority of the whole number of electors appointed; and if no person have such majority, then from the persons having the highest numbers not exceeding three on the list of those voted for as President, the House of Representatives shall choose immediately, by ballot, the President. But in choosing the President, the votes shall be taken by States, the representation from each State having one vote; a quorum for this purpose shall consist of a member or members from two-thirds of the States, and a majority of all the States shall be necessary to a choice. And if the House of Representatives shall not choose a President whenever the right of choice shall devolve upon them, before the fourth day of

March next following, then the Vice-President shall act as President, as in the case of the death or other constitutional disability of the President.

2. The person having the greatest number of votes as Vice-President shall be the Vice-President, if such number be a majority of the whole number of electors appointed; and if no person have a majority, then from the two highest numbers on the list, the Senate shall choose the Vice-President; a quorum for the purpose shall consist of two-thirds of the whole number of senators, and a majority of the whole number shall be necessary to a choice.

3. But no person constitutionally ineligible to the office of President shall be eligible to that of Vice-President of the United States.

DATES OF THE ADOPTION OF THE CONSTITUTION, AND OF THE AMENDMENTS.

The Constitution,	17th September, 1787.
The first ten Amendments,	15th December, 1791.
The eleventh Amendment,	8th January, 1798.
The twelfth Amendment,	25th September, 1804.

TREATY OF LIMITS.

Concluded January 12, 1828, *and 5th April*, 1831.

BY THE PRESIDENT OF THE UNITED STATES OF AMERICA—A PROCLAMATION.

Whereas a treaty of Limits between the United States of America, and the United Mexican States, was concluded and signed by the Plenipotentiaries of the two countries, at Mexico, on the 12th January, one thousand eight hundred and twenty-eight:

Whereas, also, an additional article thereto was concluded and signed by the Plenipotentiaries of the two countries, at Mexico, on the 5th April, one thousand eight hundred and thirty-one, which treaty and additional article are word for word as follows:

The limits of the United States of America, with the bordering territories of Mexico, having been fixed and designated by a solemn treaty, concluded and signed at Washington, on the twenty-second day of February, in the year of our Lord one thousand eight hundred and nineteen, between the respective Plenipotentiaries of the Government of the United States of America, on the one part, and of that of Spain on the other: And whereas, the said treaty having been sanctioned at a period when Mexico constituted a part of the Spanish Monarchy, it is deemed necessary now to confirm the validity of the aforesaid treaty of limits, regarding it as still in force and binding between the United States of America and the United Mexican States:

With this intention, the President of the United States of America has appointed Joel Roberts Poinsett their Plenipotentiary; and the President of the United Mexican States their Excellencies Sebastian Camacho and José Ygnacio Esteva:

And the said Plenipotentiaries having exchanged their full powers, have agreed upon and concluded, the following articles:

ARTICLE I.

The dividing limits of the respective bordering territories of the United States of America and of the United Mexican States, being the same as were agreed and fixed upon by the above-mentioned treaty of Washington, concluded and signed on the twenty-second day of February, in the year one thousand eight hundred and nineteen, the two high contracting parties will proceed forthwith to carry into full effect the third and fourth articles of said treaty, which are herein recited, as follows:

ARTICLE II.

The boundary line between the two countries, west of the Mississippi, shall begin on the gulf of Mexico, at the mouth of the river Sabine, in the sea, continuing north along the western bank of that river, to the 32d degree of latitude; thence by a line due north, to the degree of latitude where it strikes the Rio Roxo of Natchitoches, or Red River; then, following the course of the Rio Roxo westward, to the degree of longitude 100 west from London, and 23 from Washington; then, crossing the said Red River, and running thence by a line due north, to the river Arkansas; thence, following the course of the southern bank of the Arkansas, to its source, in latitude 42 north; and thence, by that parallel of latitude, to the South sea: the whole being as laid down in Melish's map of the United States, published at Philadelphia, improved to the first of January, 1818. But, if the source of the Arkansas River shall be found to fall north or south of latitude 42, then the line shall run from the said source due south or north, as the case may be, till it meets the said parallel of latitude 42; and thence, along the said parallel, to the South sea. All the islands in the Sabine, and the said Red and Arkansas rivers, throughout the course thus described, to belong to the United States, but the use of the waters, and the navigation of the Sabine to the sea, and of the said rivers Roxo and Arkansas, throughout the extent of the said boundary on their respective banks, shall be common to the respective inhabitants of both nations.

The two high contracting parties agree to cede and renounce all their rights, claims, and pretensions to the territories described by the said line; that is to say: the United States hereby cede to his Catholic Majesty, and renounce for ever, all their rights, claims, and pretensions to the territories lying west and south of the above-described line; and, in like manner, his Catholic Majesty cedes to the said United States all his rights, claims, and pretensions to any territories east and north of the said line; and for himself, his heirs, and successors, renounces all claim to the said territories for ever.

ARTICLE III.

To fix this line with more precision, and to place the landmarks which shall designate exactly the limits of both nations, each of the contracting parties shall appoint a commissioner and a surveyor, who shall meet before the termination of one year from the date of the ratification of this treaty, at Natchitoches, on the Red River, and proceed to run and mark the said line, from the mouth of the Sabine to the Red river, and from the Red River to the river Arkansas, and to ascertain the latitude of the source of the said river Arkansas, in conformity to what is agreed upon and stipulated, and the line of latitude 42, to the South sea. They shall make out plans and keep journals of their proceedings; and the result agreed upon by them shall be considered as part of this treaty, and shall have the same force as if it were inserted therein. The two Governments will amicably agree respecting the necessary articles to be furnished to those persons, and also as to their respective escorts, should such be deemed necessary.

ARTICLE IV.

The present treaty shall be ratified, and the ratifications shall be exchanged at Washington, within the term of four months, or sooner if possible.

In witness whereof, we, the respective plenipotentiaries, have signed the same, and have hereunto affixed our respective seals.

Done at Mexico, this twelfth day of January, in the year of our Lord one thousand eight hundred and twenty-eight, in the fifty-second year of the Independence of the United States of America, and in the eighth of that of the United Mexican States.

J. R. POINSETT, [L.S.]
S. CAMACHO, [L.S.]
J. Y. ESTEVA. [L.S.]

Additional Article to the Treaty of Limits concluded between the United States of America and the United Mexican States, on the 12th day of January, 1828.

The time having elapsed which was stipulated for the exchange of ratifications of the Treaty of Limits between the United Mexican States and the United States of America, signed in Mexico on the 12th of January, 1828: and both Republics being desirous that it should be carried into full and complete effect, with all due solemnity, the President of the United States of America has fully empowered, on his part, Anthony Butler, a citizen thereof, and Chargé d'Affaires of the said States in Mexico; And the Vice-President of the United Mexican States, acting as President thereof, has, in like manner, fully empowered, on his part, their Excellencies Lucas Alaman, Secretary of State and Foreign Relations, and Rafael Mangino, Secretary of the Treasury, who, after having exchanged their mutual powers, found to be ample in form, have agreed, and do hereby agree, on the following article:

The ratifications of the Treaty of Limits, concluded on the 12th January, 1828, shall be exchanged at the city of Washington, within the term of one year, counting from the date of this agreement, and sooner should it be possible.

The present Additional Article shall have the same force and effect as if it had been inserted word for word in the aforesaid treaty of 12th January, of 1828, and shall be approved and ratified in the manner prescribed by the Constitutions of the respective States.

In faith of which, the said Plenipotentiaries have hereunto set their hands and affixed their respective seals. Done in Mexico, the fifth of April, of the year one thousand eight hundred and thirty-one, the fifty-fifth of the Independence of the United States of America, and the eleventh of that of the United Mexican States.

A. Butler, [L.S.]
Lucas Alaman, [L.S.]
Rafael Mangino. [L S.]

And, whereas, the said Treaty has been duly ratified on both parts, and the respective ratifications of the same were exchanged at Washington on the fifth day of April, one thousand eight hundred and thirty two, by Edward Livingston, Secretary of State of the United States of America, and José Montoya, Chargé d'Affaires of the United Mexican States, on the part of their respective Governments:

Now, therefore, be it known, That I, Andrew Jackson, President of the United States of America, have caused the said treaty to be made public, to the end that the same, and every clause and article thereof, may be observed and fulfilled with good faith, by the United States and the citizens thereof.

In witness whereof, I have hereunto set my hand, and caused the seal of the United States to be affixed.

Done at the city of Washington, this fifth day of April, in the year of our Lord one thousand eight hundred and thirty-two, and of the Independence of the United States the fifty-sixth.

[L. S.]

Andrew Jackson.

By the President:
Edw. Livingston,
Secretary of State.

TREATY OF AMITY, COMMERCE, AND NAVIGATION.

Concluded on the 5th of April, 1831.

BY THE PRESIDENT OF THE UNITED STATES OF AMERICA.—A PROCLAMATION.

Whereas, a Treaty of Amity, Commerce, and Navigation, between the United States of America and the United Mexican States, was concluded and signed by the

Plenipotentiaries of the two countries, at Mexico, on the fifth of April, one thousand eight hundred and thirty-one, which Treaty is word for word as follows:

The United States of America and the United Mexican States, desiring to establish upon a firm basis the relations of friendship that so happily subsist between the two Republics, have determined to fix in a clear and positive manner the rules which shall in future be religiously observed between both, by means of a treaty of Amity, Commerce, and Navigation. For which important object, the President of the United States of America has appointed Anthony Butler, a citizen of the United States, and Chargé d'Affaires of the United States of America near the United Mexican States, with full powers; and the Vice-President of the United Mexican States, in the exercise of the Executive power, having conferred like full powers on his Excellency Lucas Alaman, Secretary of State for Home and Foreign Affairs, and his Excellency Rafael Mangino, Secretary of the Treasury; and the aforesaid Plenipotentiaries, after having compared and exchanged in due form their several powers as aforesaid, have agreed upon the following articles:

ARTICLE I.

There shall be a firm, inviolable, and universal peace, and a true and sincere friendship between the United States of America and the United Mexican States in all the extent of their possessions and territories, and between their people and citizens respectively, without distinction of persons or places.

ARTICLE II.

The United States of America and the United Mexican States, designing to take for the basis of their agreement the most perfect equality and reciprocity, engage mutually not to grant any particular favor to other nations in respect of commerce and navigation, which shall not immediately become common to the other party; who shall enjoy the same freely, if the concession was freely made, or upon the same conditions, if the concession was conditional.

ARTICLE III.

The citizens of the two countries respectively shall have liberty, freely and securely to come with their vessels and cargoes to all such places, ports, and rivers of the United States of America and of the United Mexican States, to which other foreigners are permitted to come; to enter into the same, and to remain and reside in any part of the said territories respectively; also, to hire and occupy houses and warehouses for the purposes of their commerce, and to trade therein, in all sorts of produce, manufactures, and merchandise; and, generally, the merchants and traders of each nation shall enjoy the most complete protection and security for their commerce.

And they shall not pay higher or other duties, imposts, or fees whatsoever, than those which the most favored nations are or may be obliged to pay; and shall enjoy all the rights, privileges, and exemptions, with respect to navigation and commerce, which the citizens of the most favored nation do or may enjoy; but subject always to the laws, usages, and statutes of the two countries respectively.

The liberty to enter and discharge the vessels of both nations, of which this article treats, shall not be understood to authorize the coasting trade, which is permitted to national vessels only.

ARTICLE IV.

No higher or other duties shall be imposed on the importation into the United Mexican States of any article, the produce, growth, or manufacture of the United States of America, than those which the same or like articles, the produce, growth, or manufacture of any other foreign country, do now or may hereafter pay; nor shall

articles, the produce, growth, or manufacture of the United Mexican States, be subject on their introduction into the United States of America to higher or other duties than those which the same or like articles of any other foreign country do now or may hereafter pay.

Higher duties shall not be imposed in the respective States on the exportation of any article to the States of the other contracting party, than those which are now or may hereafter be paid on the exportation of the like articles to any other foreign country; nor shall any prohibition be established on the exportation or importation of any article, the produce, growth, or manufacture of the United States of America, or of the United Mexican States respectively, in either of them, which shall not in like manner be established with respect to other foreign countries.

ARTICLE V.

No higher or other duties or charges on account of tonnage, light or harbor dues, pilotage, salvage in case of damage or shipwreck, or any other local charge, shall be imposed in any of the ports of Mexico on vessels of the United States of America, than those payable in the same ports by Mexican vessels; nor in the ports of the United States of America, on Mexican vessels, than shall be payable in the same ports on vessels of the United States of America.

ARTICLE VI.

The same duties shall be paid on the importation into the United Mexican States, of any article, the growth, produce, or manufacture of the United States of America, whether such importation shall be in Mexican vessels or in vessels of the United States of America; and the same duties shall be paid on the importation into the United States of America, of any article, the growth, produce, or manufacture of Mexico, whether such importation shall be in vessels of the United States of America or in Mexican vessels. The same duties shall be paid, and the same bounties and drawbacks allowed, on the exportation to Mexico of any articles, the growth, produce, or manufacture of the United States of America, whether such exportation shall be in Mexican vessels or in vessels of the United States of America: and the same duties shall be paid, and the same bounties and drawbacks allowed, on the exportation of any articles, the growth, produce, or manufacture of Mexico, to the United States of America, whether such exportation shall be in vessels of the United States of America, or in Mexican vessels.

ARTICLE VII.

All merchants, captains, or commanders of vessels, and other citizens of the United States of America, shall have full liberty in the United Mexican States to direct or manage themselves their own affairs, or to commit them to the management of whomsoever they may think proper, either as broker, factor, agent, or interpreter; nor shall they be obliged to employ for the aforesaid purposes any other persons than those employed by Mexicans, nor to pay them higher salaries or remuneration than such as are in like cases paid by Mexicans; and absolute freedom shall be allowed in all cases to the buyer and seller to bargain and fix the prices of any goods, wares, or merchandise imported into, or exported from, the United Mexican States, as they may think proper; observing the laws, usages, and customs of the country. The citizens of Mexico shall enjoy the same privileges in the States and Territories of the United States of America, being subject to the same conditions.

ARTICLE VIII.

The citizens of neither of the contracting parties shall be liable to any embargo, nor shall their vessels, cargoes, merchandise, or effects, be detained for any military expedition, nor for any public or private purpose whatsoever, without a corresponding compensation.

ARTICLE IX.

The citizens of both countries, respectively, shall be exempt from compulsory service in the army or navy; nor shall they be subjected to any other charges, or contributions, or taxes, than such as are paid by the citizens of the States in which they reside.

ARTICLE X.

Whenever the citizens of either of the contracting parties shall be forced to seek refuge or asylum in the rivers, bays, ports, or dominions of the other with their vessels, whether merchant or of war, public or private, through stress of weather, pursuit of pirates or enemies, they shall be received and treated with humanity, with the precautions which may be deemed expedient on the part of the respective Governments in order to avoid fraud, giving to them all favor and protection for repairing their vessels, procuring provisions, and placing themselves in a situation to continue their voyage without obstacle or hindrance of any kind.

ARTICLE XI.

All vessels, merchandise, or effects, belonging to the citizens of one of the contracting parties, which may be captured by pirates, whether within the limits of its jurisdiction or on the high seas, and may be carried into or found in the rivers, bays, ports, or dominions of the other, shall be delivered up to the owners, they proving, in due and proper form, their rights before the competent tribunal; it being well understood that the claim shall be made within one year, counting from the capture of said vessels or merchandise, by the parties themselves, or their attorneys, or by the agents of the respective Governments.

ARTICLE XII.

When any vessel belonging to the citizens of either of the contracting parties, shall be wrecked, foundered, or shall suffer any damage on the coasts or within the dominions of the other, there shall be given to it all the assistance and protection in the same manner which is usual and customary with the vessels of the nation where the damage happens; permitting them to unload the said vessel, if necessary, of its merchandise effects, with the precautions which may be deemed expedient on the part of the respective governments, in order to avoid fraud, without exacting for it any duty, impost, or contribution whatever, until they be exported.

ARTICLE XIII.

In whatever relates to the succession of [personal] estates, either by will or *ab intestato* [and the right of] disposal of such property, of whatever sort or denomination it may be, by sale, donation, exchange, or testament, or in any other manner whatsoever, the citizens of the two contracting parties shall enjoy, in their respective States and Territories, the same privileges, exemptions, liberties, and rights, as native citizens; and shall not be charged, in any of these respects, with other or higher duties or imposts, than those which are now, or may hereafter be paid by the citizens of the power in whose territories they may reside.

ARTICLE XIV.

Both the contracting parties promise and engage to give their special protection to the persons and property of the citizens of each other, of all occupations, who may be in their territories, subject to the jurisdiction of the one or of the other, transient or dwelling therein; leaving open and free to them the tribunals of justice for their

judicial recourse, on the same terms which are usual and customary with the natives or citizens of the country in which they may be; for which they may employ, in defence of their rights, such advocates, solicitors, notaries, agents, and factors, as they may judge proper, in all their trials at law; and the citizens of either party, or their agents, shall enjoy, in every respect, the same rights and privileges, either in prosecuting or defending their rights of person or of property, as the citizens of the country where the cause may be tried.

ARTICLE XV.

The citizens of the United States of America, residing in the United Mexican States, shall enjoy in their houses, persons, and properties, the protection of the government, with the most perfect security and liberty of conscience: they shall not be disturbed or molested in any manner on account of their religion, so long as they respect the Constitution, the laws, and established usages of the country where they reside; and they shall also enjoy the privilege of burying the dead in places which now are, or may hereafter be assigned for that purpose; nor shall the funerals or sepulchres of the dead be disturbed in any manner, nor under any pretext.

The citizens of the United Mexican States shall enjoy, throughout all the States and Territories of the United States of America, the same protection; and shall be allowed the free exercise of their religion, in public or in private, either within their own houses, or in the chapels or places of worship set apart for that purpose.

ARTICLE XVI.

It shall be lawful for the citizens of the United States of America and of the United Mexican States, respectively, to sail with their vessels with all manner of security and liberty, no distinction being made who are the owners of the merchandise laden thereon, from any port to the places of those who now are, or may hereafter be at enmity with the United States of America or with the United Mexican States. It shall likewise be lawful for the aforesaid citizens respectively to sail with their vessels and merchandise before mentioned, and to trade with the same liberty and security from the places, ports, and havens of those who are enemies of both or either party, without any opposition or disturbance whatsoever, not only directly from the places of the enemy before mentioned to neutral places, but also from one place belonging to an enemy to another place belonging to an enemy, whether they be under the jurisdiction of the same Government or under several; and it is hereby stipulated that free ships shall also give freedom to goods; and that everything shall be deemed free and exempt which shall be found on board the vessels belonging to the citizens of either of the contracting parties, although the whole lading or any part thereof should appertain to the enemies of either, contraband goods being always excepted. It is also agreed that the same liberty be extended to persons who are on board a free vessel, so that, although they be enemies to either party, they shall not be made prisoners, or taken out of that free vessel, unless they are soldiers, and in the actual service of the enemy. By the stipulation that the flag shall cover the property, the two contracting parties agree that this shall be so understood with respect to those powers who recognise this principle; but if either of the two contracting parties shall be at war with a third party, and the other neutral, the flag of the neutral shall cover the property of enemies whose Governments acknowledge this principle, and not of others.

ARTICLE XVII.

It is likewise agreed that in the case where the neutral flag of one of the contracting parties shall protect the property of the enemies of the other, by virtue of the above stipulation, it shall always be understood that the neutral property found on board such enemies' vessels shall be held and considered as enemies' property, and as such shall be liable to detention and confiscation, except such property as was put on board such vessel before the declaration of war, or even afterwards if it were done without

the knowledge of it: but the contracting parties agree that four months having elapsed after the declaration, their citizens shall not plead ignorance thereof; on the contrary, if the flag of the neutral does not protect the enemy's property, in that case the goods and merchandises embarked in such enemy's vessel shall be free.

ARTICLE XVIII.

This liberty of commerce and navigation shall extend to all kinds of merchandise, excepting those only which are distinguished by the name of contraband; and under this name of contraband or prohibited goods, shall be comprehended, first, cannons, mortars, howitzers, swivels, blunderbusses, muskets, fuzees, rifles, carbines, pistols, pikes, swords, sabres, lances, spears, halberts; and grenades, bombs, powder, matches, balls, and all other things belonging to the use of these arms; secondly, bucklers, helmets, breast-plates, coats of mail, infantry belts, and clothes made up in a military form, and for a military use; third, cavalry belts and horses with their furniture; fourthly, and generally, all kinds of arms, and instruments of iron, steel, brass, and copper, or of any other materials manufactured, prepared, and formed expressly to make war by sea or land.

ARTICLE XIX.

All other merchandise and things not comprehended in the articles of contraband expressly enumerated and classified as above, shall be held and considered as free and subjects of free and lawful commerce, so that they may be carried and transported in the freest manner by both the contracting parties, even to places belonging to an enemy, excepting only those places which are at that time besieged or blockaded; and to avoid all doubt in that particular, it is declared that those places only are besieged or blockaded, which are actually besieged or blockaded by a belligerent force capable of preventing the entry of the neutral.

ARTICLE XX.

The articles of contraband before enumerated and classified, which may be found in a vessel bound for the enemy's port, shall be subject to detention and confiscation, leaving free the rest of the cargo and the vessel, that the owners may dispose of them as they see proper. No vessels of either of the two nations shall be detained on the high seas on account of having on board articles of contraband, whenever the master, captain, or supercargo of said vessel will deliver up the articles of contraband to the captor, unless the quantity of such articles be so great and of so large a bulk, that they cannot be received on board the capturing vessel without great inconvenience; but in this, and in all other cases of just detention, the vessel detained shall be sent to the nearest convenient and safe port for trial and judgment, according to law.

ARTICLE XXI.

And, whereas it frequently happens that vessels sail for a port or place belonging to an enemy without knowing that the same is besieged, blockaded, or invested, it is agreed that every vessel so situated may be turned away from such port or place, but shall not be detained; nor shall any part of her cargo, if not contraband, be confisca ed, unless, after warning of such blockade or investment from the commanding officer of the blockading force, she should again attempt to enter the aforesaid port; but she shall be permitted to go to any other port or place she may think proper. Nor shall any vessel of either of the contracting parties, that may have entered into such port before the same was actually besieged, blockaded, or invested by the other, be restrained from quitting such place with her cargo; nor if found therein after the surrender, shall such vessel or her cargo be liable to confiscation, but she shall be restored to the owner thereof.

ARTICLE XXII.

In order to prevent all kinds of disorder in the visiting and examination of the vessels and cargoes of both the contracting parties on the high seas, they have agreed, mutually, that, whenever a vessel of war, public or private, should meet with a neutral vessel of the other contracting party, the first shall remain out of cannon shot, and may send his boat, with two or three men only, in order to execute the said examination of the papers concerning the ownership and cargo of the vessel, without causing the least extortion, violence, or ill-treatment, for which the commanders of the said armed vessels shall be responsible with their persons and property; and for this purpose the commanders of said private armed vessels shall, before receiving their commissions, give sufficient security to answer for all the damages they may commit. And it is expressly agreed, that the neutral party shall in no case be required to go on board the examining vessel for the purpose of exhibiting his papers, or for any other purpose whatsoever.

ARTICLE XXIII.

To avoid all kinds of vexation and abuse in the examination of papers relating to the ownership of vessels belonging to the citizens of the two contracting parties, they have agreed, and do agree, that in case one of them should be engaged in war, the vessels belonging to the citizens of the other must be furnished with sea-letters or passports, expressing the name, property, and bulk of the vessel, and also the name and place of habitation of the master or commander of said vessel, in order that it may thereby appear that the said vessel really and truly belongs to the citizens of one of the contracting parties; they have likewise agreed that such vessels being laden, besides the said sea-letters or passports, shall also be provided with certificates, containing the several particulars of the cargo, and the place whence the vessel sailed, so that it may be known whether any forbidden or contraband goods be on board the same; which certificate shall be made out by the officers of the place whence the vessel sailed, in the accustomed form: without which requisites, the said vessel may be detained to be adjudged by the competent tribunal, and may be declared legal prize, unless the said defect shall be satisfied or supplied by testimony entirely equivalent to the satisfaction of the competent tribunal.

ARTICLE XXIV.

It is further agreed, that the stipulations above expressed, relative to visiting and examination of vessels, shall only apply to those which sail without convoy; and when said vessels are under convoy, the verbal declaration of the commander of the convoy, or his word of honor that the vessels under his protection belong to the nation whose flag he carries, and when they are bound to an enemy's port, that they have no contraband goods on board, shall be sufficient.

ARTICLE XXV.

It is further agreed, that in all cases the established courts for prize causes, in the country to which the prizes may be conducted, shall alone take cognizance of them. And whenever such tribunal of either party shall pronounce judgment against any vessel, or goods, or property claimed by the citizens of the other party, the sentence or decree shall mention the reason or motives on which the same shall have been founded; and an authenticated copy of the sentence or decree, in conformity with the laws and usages of the country, and of all the proceedings of the case, shall, if demanded, be delivered to the commander or agent of said vessel, without any delay, he paying the legal fees for the same.

ARTICLE XXVI.

For the greater security of the intercourse between the citizens of the United States of America and of the United Mexican States, it is agreed now for then, that if there should be at any time hereafter an interruption of the friendly relations which now exist, or a war unhappily break out between the two contracting parties, there shall be allowed the term of six months to the merchants residing on the coast, and one year to those residing in the interior of the States and Territories of each other respectively, to arrange their business, dispose of their effects, or transport them wheresoever they may please, giving them a safe-conduct to protect them to the port they may designate. Those citizens who may be established in the States and Territories aforesaid, exercising any other occupation or trade, shall be permitted to remain in the uninterrupted enjoyment of their liberty and property, so long as they conduct themselves peaceably, and do not commit any offence against the laws: and their goods and effects, of whatever class and condition they may be, shall not be subject to any embargo or sequestration whatever, nor to any charge nor tax other than may be established upon similar goods and effects belonging to the citizens of the State in which they reside respectively; nor shall the debts between individuals, nor moneys in the public funds, or in public or private banks, or shares in companies, be confiscated, embargoed, or detained.

ARTICLE XXVII.

Both the contracting parties being desirous of avoiding all inequality in relation to their public communications and official intercourse, have agreed and do agree to grant to the envoys, ministers, and other public agents, the same favors, immunities, and exemptions which those of the most favored nation do or may enjoy; it being understood that whatever favors, immunities, or privileges the United States of America or the United Mexican States may find proper to give to the ministers and public agents of any other power, shall by the same act be extended to those of each of the contracting parties.

ARTICLE XXVIII.

In order that the consuls and vice-consuls of the two contracting parties may enjoy the rights, prerogatives, and immunities which belong to them by their character, they shall, before entering upon the exercise of their functions, exhibit their commission or patent in due form to the Government to which they are accredited; and having obtained their exequatur, they shall be held and considered as such by all the authorities, magistrates, and inhabitants of the consular district in which they reside. It is agreed likewise to receive and admit consuls and vice-consuls in all the ports and places open to foreign commerce, who shall enjoy therein all the rights, prerogatives, and immunities of the consuls and vice-consuls of the most favored nation, each of the contracting parties remaining at liberty to except those ports and places in which the admission and residence of such consuls and vice-consuls may not seem expedient.

ARTICLE XXIX.

It is likewise agreed that the consuls, vice-consuls, their secretaries, officers, and persons attached to the service of consuls, they not being citizens of the country in which the consul resides, shall be exempt from all compulsory public service, and also from all kind of taxes, imposts, and contributions levied specially on them, except those which they shall be obliged to pay on account of commerce or their property, to which the citizens and inhabitants, native and foreign, of the country in which they reside, are subject; being in everything besides subject to the laws of their respective States. The archives and papers of the consulates shall be respected inviolably, and under no pretext whatever shall any magistrate seize, or in any way interfere with them.

ARTICLE XXX.

The said consuls shall have power to require the assistance of the authorities of the country for the arrest, detention, and custody of deserters from the public and private vessels of their country; and for that purpose, they shall address themselves to the courts, judges, and officers competent, and shall demand the said deserters in writing, proving, by an exhibition of the register of the vessel, or ship's roll, or other public documents, that the man or men demanded were part of said crews; and on this demand so proved (saving always where the contrary is proved), the delivery shall not be refused. Such deserters, when arrested, shall be placed at the disposal of said consuls, and may be put in the public prisons at the request and expense of those who reclaim them, to be sent to the vessels to which they belonged, or to others of the same nation. But if they be not sent back within two months, to be counted from the day of their arrest, they shall be set at liberty, and shall not be again arrested for the same cause.

ARTICLE XXXI.

For the purpose of more effectually protecting their commerce and navigation, the two contracting parties do hereby agree, as soon hereafter as circumstances will permit, to form a consular convention, which shall declare specially the powers and immunities of the consuls and vice-consuls of the respective parties.

ARTICLE XXXII.

For the purpose of regulating the interior commerce between the frontier territories of both Republics, it is agreed that the Executive of each shall have power, by mutual agreement, of determining on the route and establishing the roads by which such commerce shall be conducted; and in all cases where the caravans employed in such commerce may require convoy and protection by military escort, the Supreme Executive of each nation shall, by mutual agreement, in like manner, fix on the period of departure for such caravans, and the point at which the military escort of the two nations shall be exchanged. And it is further agreed, that, until the regulations for governing this interior commerce between the two nations shall be established, the commercial intercourse between the State of Missouri of the United States of America, and New Mexico in the United Mexican States, shall be conducted as heretofore, each Government affording the necessary protection to the citizens of the other.

ARTICLE XXXIII.

It is likewise agreed that the two contracting parties shall, by all the means in their power, maintain peace and harmony among the several Indian nations who inhabit the lands adjacent to the lines and rivers which form the boundaries of the two countries; and the better to attain this object, both parties bind themselves expressly to restrain, by force, all hostilities and incursions on the part of the Indian nations living within their respective boundaries: so that the United States of America will not suffer their Indians to attack the citizens of the United Mexican States, nor the Indians inhabiting their territory; nor will the United Mexican States permit the Indians residing within their territories to commit hostilities against the citizens of the United States of America, nor against the Indians residing within the limits of the United States, in any manner whatever.

And in the event of any person or persons captured by the Indians who inhabit the territory of either of the contracting parties, being or having been carried into the territories of the other, both governments engage and bind themselves in the most solemn manner to return them to their country as soon as they know of their being within their respective territories, or to deliver them up to the agent or representative of the government that claims them, giving to each other, reciprocally, timely notice, and the claimant paying the expenses incurred in the transmission and main-

tenance of such person or persons, who, in the meantime, shall be treated with the utmost hospitality by the local authorities of the place where they may be. Nor shall it be lawful, under any pretext whatever, for the citizens of either of the contracting parties to purchase or hold captive prisoners made by the Indians inhabiting the territories of the other.

ARTICLE XXXIV.

The United States of America and the United Mexican States, desiring to make as durable as circumstances will permit, the relations which are to be established between the two parties by virtue of this treaty or general convention of amity, commerce, and navigation, have declared solemnly, and do agree to the following points:

First. The present treaty shall remain and be of force for eight years from the day of the exchange of the ratifications, and until the end of one year after either of the contracting parties shall have given notice to the other of its intention to terminate the same; each of the contracting parties reserving to itself the right of giving such notice to the other, at the end of said term of eight years. And it is hereby agreed between them, that, on the expiration of one year after such notice shall have been received by either of the parties from the other party, this treaty, in all its parts relating to commerce and navigation, shall altogether cease and determine, and in all those parts which relate to peace and friendship, it shall be permanently and perpetually binding on both the contracting parties.

Secondly. If any one or more of the citizens of either party shall infringe any of the articles of this treaty, such citizens shall be held personally responsible for the same; and the harmony and good correspondence between the two nations shall not be interrupted thereby; each party engaging in no way to protect the offender, or sanction such violation.

Thirdly. If (what indeed cannot be expected) any of the articles contained in the present treaty shall be violated or infracted in any manner whatever, it is stipulated that neither of the contracting parties will order or authorize any acts of reprisal, nor declare war against the other, on complaints of injuries or damages, until the said party considering itself offended, shall first have presented to the other a statement of such injuries or damages, verified by competent proofs, and demanded justice and satisfaction, and the same shall have been either refused or unreasonably delayed.

Fourthly. Nothing in this treaty contained, shall however be construed to operate contrary to former and existing public treaties with other Sovereigns or States.

The present treaty of amity, commerce, and navigation, shall be approved and ratified by the President of the United States of America, by and with the advice and consent of the Senate thereof, and by the Vice-President of the United Mexican States, with the consent and approbation of the Congress thereof; and the ratifications shall be exchanged in the city of Washington, within the term of one year, to be counted from the date of the signature hereof; or sooner, if possible.

In witness whereof, we, the Plenipotentiaries of the United States of America and of the United Mexican States, have signed and sealed these presents. Done in the city of Mexico, on the fifth day of April, in the year of our Lord one thousand eight hundred and thirty-one, in the fifty-fifth year of the Independence of the United States of America, and in the eleventh of that of the United Mexican States.

A. Butler, [L.S.]
Lucas Alaman, [L.S.]
Rafael Mangino. [L.S.]

ADDITIONAL ARTICLE.

Whereas, In the present state of the Mexican shipping, it would not be possible for Mexico to receive the full advantage of the reciprocity established in the fifth and sixth articles of the treaty signed this day, it is agreed that for the term of six years, the stipulations contained in the said articles shall be suspended; and in lieu thereof, it is hereby agreed, that, until the expiration of the said term of six years, American

vessels entering into the ports of Mexico, and all articles, the produce, growth, or manufacture of the United States of America, imported in such vessels, shall pay no other or higher duties than are or may hereafter be payable in the said ports by the vessels and the like articles, the growth, produce, or manufacture of the most favored nation; and, reciprocally, it is agreed that Mexican vessels entering into the ports of the United States of America, and all articles, the growth, produce, or manufacture of the United Mexican States, imported in such vessels, shall pay no other or higher duties than are, or may hereafter be, payable in the said ports by the vessels and the like articles, the growth, produce, or manufacture of the most favored nation; and that no higher duties shall be paid, or bounties or drawbacks allowed, on the exportation of any article, the growth, produce, or manufacture of either country, in the vessels of the other, than upon the exportation of the like articles in the vessels of any other foreign country.

The present additional article shall have the same force and value as if it had been inserted, word for word, in the treaty signed this day. It shall be ratified, and the ratifications exchanged at the same time.

In witness whereof, we, the respective Plenipotentiaries, have signed and sealed the same.

Done at Mexico, on the fifth day of April, one thousand eight hundred and thirty-one.

A. BUTLER, [L.S.]
LUCAS ALAMAN, [L.S.]
RAFAEL MANGINO. [L.S.]

And whereas, the said treaty has been duly ratified on both parts, and the respective ratifications of the same were exchanged at Washington on the fifth day of April, one thousand eight hundred and thirty-two, by EDWARD LIVINGSTON, Secretary of State of the United States of America, and JOSÉ MONTOYA, Chargé d'Affaires of the United Mexican States, on the part of their respective governments:

Now, therefore, be it known that I, ANDREW JACKSON, President of the United States of America, have caused the said treaty to be made public, to the end that the same, and every clause and article thereof, may be observed and fulfilled with good faith by the United States and the citizens thereof.

In witness whereof, I have hereunto set my hand, and caused the seal of the United States to be affixed.

Done at the city of Washington, this fifth day of April, in the year of our Lord one thousand eight hundred and thirty-two, and of the Independence of the United States the fifty-sixth.

[L. S.]

ANDREW JACKSON.

By the President:

EDW. LIVINGSTON, *Secretary of State.*

CONVENTION

FOR A SECOND ADDITIONAL ARTICLE TO THE TREATY OF LIMITS.

Concluded April 3, 1835—*Ratified April* 21, 1836.

BY THE PRESIDENT OF THE UNITED STATES OF AMERICA—A PROCLAMATION.

Whereas, A convention for a second additional article to the Treaty of Limits between the United States of America and the United Mexican States, the ratifications of which were exchanged in this city on the fifth day of April, one thousand eight hundred and thirty-two, was concluded and signed by their plenipotentiaries in the city of Mexico, on the third day of April, one thousand eight hundred and thirty-five, which convention is word for word as follows:

A treaty having been concluded and signed in the city of Mexico, on the 12th day of January, 1828, between the United States of America and the United Mexican States, for the purpose of establishing the true dividing line and boundary between the two nations, the third article of which treaty is as follows: "To fix this line with more precision, and to place the landmarks which shall designate exactly the limits of both nations, each of the contracting parties shall appoint a commissioner and a surveyor, who shall meet before the termination of one year from the date of the ratification of this treaty, at Natchitoches, on the Red River, and proceed to run and mark said line from the mouth of the Sabine to the Red River, and from the Red River to the river Arkansas, and to ascertain the latitude of the source of said river Arkansas, in conformity to what is agreed upon and stipulated, and the line of latitude 42 deg. to the South Sea. They shall make out plans, and keep journals of their proceedings, and the result agreed upon by them shall be considered as part of this treaty, and shall have the same force as if it were inserted therein. The two governments will amicably agree respecting the necessary articles to be furnished to those persons, and also as to their respective escorts, should such be deemed necessary." And the ratifications of said treaty having been exchanged in the city of Washington, on the fifth day of April, in the year of 1832, but from various causes the contracting parties have been unable to perform the stipulations contained in the above-mentioned third article, and the period within which the said stipulations could have been executed, has elapsed, and both republics being desirous that the said treaty should be carried into effect with all due solemnity, the President of the United States of America has for that purpose fully empowered on his part Anthony Butler, a citizen thereof and Chargé d'Affaires of said States in Mexico; and the acting President of the United Mexican States having in like manner fully empowered on his part their Excellencies José Maria Gutierrez de Estrada, Secretary of State for Home and Foreign Affairs, and José Mariano Blasco, Secretary of the Treasury; and the said plenipotentiaries, after having mutually exchanged their full powers, found to be ample and in form, they have agreed and do hereby agree to the following second additional article to the said treaty.

Within the space of one year, to be estimated from the date of the exchange of the ratifications of this said additional article, there shall be appointed by the government of the United States of America and of the Mexican United States, each a commissioner and surveyor, for the purpose of fixing with more precision the dividing line, and for establishing the landmarks of boundary and limits between the two nations, with the exactness stipulated by the third article of the Treaty of Limits, concluded and signed in Mexico on the 12th day of January, 1828, and the ratifications of which were exchanged in Washington City on the 5th day of April, 1832. And the present additional article shall have the same force and effect as if it had been inserted word for word in the above-mentioned treaty of the 12th of January, 1828, and shall be approved and ratified in the manner prescribed by the constitutions of the respective States.

In faith of which the said plenipotentiaries have hereunto set their hands and affixed their respective seals.

Done in the city of Mexico on the 3d day of April, in the year of our Lord one thousand eight hundred and thirty-five, in the fifty-ninth year of the Independence of the United States of America, and the fifteenth of that of the United Mexican States.

A. BUTLER, [L.S.]
J. M. GUTIERREZ DE ESTRADA, [L.S.]
JOSÉ MARIANO BLASCO. [L.S.]

And whereas the said convention has been duly ratified on both parts, and the respective ratifications of the same were exchanged at Washington, the twentieth day of April, one thousand eight hundred and thirty-six, by John Forsyth, Secretary of State of the United States of America, and J. M. de Castillo y Lanzas, Chargé d'Affaires of the Mexican Republic, on the part of their respective governments:

Now, therefore, be it known that I, Andrew Jackson, President of the United States of America, have caused the said convention to be made public, to the end that the same and every clause thereof may be observed and fulfilled with good faith by the United States and the citizens thereof. In witness whereof, I have hereunto set my hand, and have caused the seal of the United States to be affixed.

Done at the city of Washington, this twenty-first day of April, in the year of our Lord one thousand eight hundred and thirty-six, and of the Independence of the United States the sixtieth.

[L.S.]

ANDREW JACKSON.

By the President:

JOHN FORSYTH, *Secretary of State.*

CONVENTION

FOR THE ADJUSTMENT OF CLAIMS.

Concluded April 11th, 1839.

BY THE PRESIDENT OF THE UNITED STATES OF AMERICA.—A PROCLAMATION.

Whereas, A convention for the adjustment of claims of citizens of the United States of America upon the government of the Mexican Republic was concluded and signed at Washington on the eleventh day of April, in the year of our Lord one thousand eight hundred and thirty-nine, which convention, being in the English and Spanish languages, is word for word as follows:

Convention for the Adjustment of Claims of Citizens of the United States of America upon the Government of the Mexican Republic.

Whereas, A convention for the adjustment of claims of citizens of the United States upon the government of the Mexican Republic was concluded and signed at Washington on the 10th day of September, 1838, which convention was not ratified on the part of the Mexican Government, on the alleged ground that the consent of his Majesty the King of Prussia to provide an arbitrator to act in the case provided by said convention could not be obtained:

And whereas the parties to said convention are still, and equally, desirous of terminating the discussions which have taken place between them in respect to said claims, arising from injuries to the persons and property of citizens of the United States by Mexican authorities, in a manner equally advantageous to the citizens of the United States by whom said injuries have been sustained, and more convenient to Mexico than that provided by said convention: the President of the United States has named for this purpose, and furnished with full powers, John Forsyth, Secretary of State of the said United States; and the President of the Mexican Republic has named his Excellency Señor Don Francisco Pizarro Martinez, accredited as Envoy Extraordinary and Minister Plenipotentiary of the Mexican Republic to the United States, and has furnished him with full powers for the same purpose. And the said plenipotentiaries have agreed upon and concluded the following articles:

ARTICLE I.

It is agreed that all claims of citizens of the United States upon the Mexican Government, statements of which, soliciting the interposition of the Government of the United States, have been presented to the Department of State or to the diplomatic agent of the United States at Mexico, until the signature of this convention shall be referred to four commissioners, who shall form a board and be appointed in the following manner, namely: two commissioners shall be appointed by the President of the United States, by and with the advice and consent of the Senate thereof, and two commissioners by the President of the Mexican Republic. The said commissioners so appointed shall be sworn impartially to examine and decide upon the said claims according to such evidence as shall be laid before them on the part of the United States and the Mexican Republic respectively.

ARTICLE II.

The said board shall have two secretaries, versed in the English and Spanish languages; one to be appointed by the President of the United States, by and with the advice and consent of the Senate thereof, and the other by the President of the Mexican Republic. And the said secretaries shall be sworn faithfully to discharge their duty in that capacity.

ARTICLE III.

The said board shall meet in the city of Washington within three months after the exchange of the ratifications of this convention, and within eighteen months from the time of its meeting shall terminate its duties. The Secretary of State of the United States shall, immediately after the exchange of the ratifications of this convention, give notice of the time of the meeting of the said board, to be published in two newspapers in Washington, and in such other papers as he may think proper.

ARTICLE IV.

All documents which now are in, or hereafter, during the continuance of the commission constituted by this convention, may come into, the possession of the Department of State of the United States, in relation to the aforesaid claims, shall be delivered to the board. The Mexican Government shall furnish all such documents and explanations as may be in their possession, for the adjustment of the said claims according to the principles of justice, the law of nations, and the stipulations of the treaty of amity and commerce between the United States and Mexico of the 5th of April, 1831; the said documents to be specified when demanded at the instance of said commissioners.

ARTICLE V.

The said commissioners shall, by a report under their hands and seals, decide upon the justice of the said claims, and the amount of compensation, if any, due from the Mexican Government in each case.

ARTICLE VI.

It is agreed that if it should not be convenient for the Mexican Government to pay at once the amount so found due, it shall be at liberty, immediately after the decisions in the several cases shall have taken place, to issue treasury notes, receivable at the maritime custom-houses of the Republic in payment of any duties which may be due or imposed at said custom-houses upon goods entered for importation or exportation: said treasury notes to bear an interest at the rate of eight per centum per annum from the date of the award on the claim in payment of which said treasury notes shall have been issued until that of their receipt at the Mexican custom-houses. But as the presentation and receipt of said treasury notes at said custom-houses in large amounts might be inconvenient to the Mexican Government, it is further agreed that, in such case, the obligation of said government to receive them in payment of duties, as above stated, may be limited to one-half the amount of said duties.

ARTICLE VII.

It is further agreed that in the event of the commissioners differing in relation to the aforesaid claims, they shall, jointly or severally, draw up a report stating in detail the points on which they differ, and the grounds upon which their respective opinions have been formed. And it is agreed that the said report or reports, with

authenticated copies of all documents upon which they may be founded, shall be referred to the decision of his Majesty the King of Prussia. But as the documents relating to the aforesaid claims are so voluminous that it cannot be expected his Prussian Majesty would be willing or able personally to investigate them, it is agreed that he shall appoint a person to act as an arbiter in his behalf; that the person so appointed shall proceed to Washington; that his travelling expenses to that city, and from thence on his return to his place of residence in Prussia, shall be defrayed, one-half by the United States and one-half by the Mexican Republic; and that he shall receive as a compensation for his services a sum equal to one-half the compensation that may be allowed by the United States to one of the commissioners to be appointed by them, added to one-half the compensation that may be allowed by the Mexican government to one of the commissioners to be appointed by it. And the compensation of such arbiter shall be paid, one-half by the United States and one-half by the Mexican government.

ARTICLE VIII.

Immediately after the signature of this convention, the plenipotentiaries of the contracting parties (both being thereunto competently authorized) shall, by a joint note, addressed to the minister for foreign affairs of his Majesty the King of Prussia, to be delivered by the minister of the United States at Berlin, invite the said monarch to appoint an umpire to act in his behalf in the manner above-mentioned, in case this convention shall be ratified respectively by the governments of the United States and Mexico.

ARTICLE IX.

It is agreed that, in the event of his Prussian Majesty's declining to appoint an umpire to act in his behalf, as aforesaid, the contracting parties, on being informed thereof, shall, without delay, invite her Britannic Majesty, and, in case of her declining, his Majesty the King of the Netherlands, to appoint an umpire to act in their behalf, respectively, as above provided.

ARTICLE X.

And the contracting parties further engage to consider the decision of such umpire to be final and conclusive on all the matters so referred.

ARTICLE XI.

For any sums of money which the umpire shall find due to citizens of the United States by the Mexican government, treasury notes shall be issued in the manner aforementioned.

ARTICLE XII.

And the United States agree for ever to exonerate the Mexican government from any further accountability for claims which shall either be rejected by the board or the arbiter aforesaid, or which, being allowed by either, shall be provided for by the said government in the manner before mentioned.

ARTICLE XIII.

And it is agreed that each government shall provide compensation for the commissioners and secretary to be appointed by it; and that the contingent expenses of the board shall be defrayed, one moiety by the United States and one moiety by the Mexican Republic.

ARTICLE XIV.

This convention shall be ratified, and the ratifications shall be exchanged at Washington within twelve months from the signature hereof, or sooner if possible.

In faith whereof, we, the plenipotentiaries of the United States of America and of the Mexican Republic, have signed and sealed these presents.

Done in the city of Washington, on the eleventh day of April, in the year of our Lord one thousand eight hundred and thirty-nine, in the sixty-third year of the Independence of the United States of America and the nineteenth of that of the Mexican Republic.

JOHN FORSYTH, [L.S]
FRAN. PIZARRO MARTINEZ. [L.S.]

And whereas the said convention has been duly ratified on both parts, and the respective ratifications of the same have been exchanged:

Now, therefore, be it known that I, MARTIN VAN BUREN, President of the United States, have caused the said convention to be made public, to the end that the same, and every clause and article thereof, may be observed and fulfilled with good faith by the United States, and the citizens thereof.

In witness whereof, I have hereunto set my hand and caused the seal of the United States to be affixed.

Done at the city of Washington, this eighth day of April, in the year of our Lord one thousand eight hundred and forty, and of the Independence of the United States the sixty-fourth.

[L.S.]

M. VAN BUREN.

By the President:
JOHN FORSYTH, *Secretary of State.*

TREATY OF PEACE,

FRIENDSHIP, LIMITS, AND SETTLEMENT.

Dated at Guadalupe Hidalgo, 2d February, 1848.—*Ratified by the President U. S, 16th March,* 1848.—*Exchanged at Queretaro, 30th May,* 1848.—*Proclaimed by the President U. S. 4th July,* 1848.

BY THE PRESIDENT OF THE UNITED STATES OF AMERICA.—A PROCLAMATION.

Whereas, a treaty of peace, friendship, limits, and settlement, between the United States of America and the Mexican Republic, was concluded and signed at the City of Guadalupe Hidalgo on the second day of February, one thousand eight hundred and forty-eight, which treaty, as amended by the Senate of the United States, and being in the English and Spanish languages, is word for word as follows:

In the name of Almighty God:

The United States of America and the United Mexican States, animated by a sincere desire to put an end to the calamities of the war which unhappily exists between the two republics, and to establish upon a solid basis relations of peace and friendship, which shall confer reciprocal benefits upon the citizens of both, and assure the concord, harmony, and mutual confidence wherein the two people should live as good neighbors, have for that purpose appointed their respective plenipotentiaries—that is to say, the President of the United States has appointed Nicholas P. Trist, a citizen of the United States, and the President of the Mexican Republic has

appointed Don Luis Gonzaga Cuevas, Don Bernardo Couto, and Don Miguel Atristain, citizens of the said republic, who, after a reciprocal communication of their respective full powers, have, under the protection of Almighty God, the author of peace, arranged, agreed upon, and signed the following

Treaty of Peace, Friendship, Limits, and Settlement between the United States of America and the Mexican Republic.

ARTICLE I.

There shall be firm and universal peace between the United States of America and the Mexican republic, and between their respective countries, territories, cities, towns, and people, without exception of places or persons.

ARTICLE II.

Immediately upon the signature of this treaty, a convention shall be entered into between a commissioner or commissioners appointed by the General-in-Chief of the forces of the United States, and such as may be appointed by the Mexican government, to the end that a provisional suspension of hostilities shall take place, and that, in the places occupied by the said forces, constitutional order may be reëstablished, as regards the political, administrative, and judicial branches, so far as this shall be permitted by the circumstances of military occupation.

ARTICLE III.

Immediately upon the ratification of the present treaty by the government of the United States, orders shall be transmitted to the commanders of their land and naval forces, requiring the latter (provided this treaty shall then have been ratified by the government of the Mexican republic, and the ratifications exchanged) immediately to desist from blockading any Mexican ports; and requiring the former (under the same condition) to commence, at the earliest moment practicable, withdrawing all troops of the United States then in the interior of the Mexican republic, to points that shall be selected by common agreement, at a distance from the seaports not exceeding thirty leagues; and such evacuation of the interior of the republic shall be completed with the least possible delay; the Mexican government hereby binding itself to afford every facility in its power for rendering the same convenient to the troops, on their march and in their new positions, and for promoting a good understanding between them and the inhabitants. In like manner, orders shall be despatched to the persons in charge of the custom-houses at all ports occupied by the forces of the United States, requiring them (under the same condition) immediately to deliver possession of the same to the persons authorized by the Mexican government to receive it, together with all bonds and evidences of debt for duties on importations and on exportations, not yet fallen due. Moreover, a faithful and exact account shall be made out, showing the entire amount of all duties on imports and on exports collected at such custom-houses, or elsewhere in Mexico, by authority of the United States, from and after the day of the ratification of this treaty by the government of the Mexican republic; and also an account of the cost of collection; and such entire amount, deducting only the cost of collection, shall be delivered to the Mexican government, at the city of Mexico, within three months after the exchange of ratifications.

The evacuation of the capital of the Mexican republic by the troops of the United States, in virtue of the above stipulation, shall be completed in one month after the orders there stipulated for shall have been received by the commander of said troops, or sooner if possible.

ARTICLE IV.

Immediately after the exchange of ratifications of the present treaty, all castles, forts, territories, places, and possessions, which have been taken or occupied by the forces of the United States during the present war, within the limits of the Mexican republic, as about to be established by the following article, shall be definitively restored to the said republic, together with all the artillery, arms, apparatus of war, munitions, and other public property, which were in the said castles and forts when captured, and which shall remain there at the time when this treaty shall be duly ratified by the government of the Mexican republic. To this end, immediately upon the signature of this treaty, orders shall be despatched to the American officers commanding such castles and forts, securing against the removal or destruction of any such artillery, arms, apparatus of war, munitions, or other public property. The city of Mexico, within the inner line of intrenchments surrounding the said city, is comprehended in the above stipulations, as regards the restoration of artillery, apparatus of war, etc.

The final evacuation of the territory of the Mexican republic by the forces of the United States, shall be completed in three months from the said exchange of ratifications, or sooner if possible: the Mexican government hereby engaging, as in the foregoing article, to use all means in its power for facilitating such evacuation, and rendering it convenient to the troops, and for promoting a good understanding between them and the inhabitants.

If, however, the ratification of this treaty by both parties should not take place in time to allow the embarkation of the troops of the United States to be completed before the commencement of the sickly season, at the Mexican ports on the gulf of Mexico, in such case a friendly arrangement shall be entered into between the General-in-Chief of the said troops and the Mexican government, whereby healthy and otherwise suitable places at a distance from the ports not exceeding thirty leagues shall be designated for the residence of such troops as may not yet have embarked, until the return of the healthy season. And the space of time here referred to as comprehending the sickly season, shall be understood to extend from the first day of May to the first day of November.

All prisoners of war taken on either side, on land or on sea, shall be restored as soon as practicable after the exchange of ratifications of this treaty. It is also agreed that if any Mexicans should now be held as captives by any savage tribe within the limits of the United States, as about to be established by the following article, the government of the said United States will exact the release of such captives, and cause them to be restored to their country.

ARTICLE V.

The boundary line between the two republics shall commence in the gulf of Mexico, three leagues from land, opposite the mouth of the Rio Grande, otherwise called Rio Bravo del Norte, or opposite the mouth of its deepest branch, if it should have more than one branch emptying directly into the sea; from thence up the middle of that river, following the deepest channel, where it has more than one, to the point where it strikes the southern boundary of New Mexico; thence westwardly along the whole southern boundary of New Mexico (which runs north of the town called *Paso*) to its western termination; thence northward along the western line of New Mexico, until it intersects the first branch of the river Gila (or if it should not intersect any branch of that river, then to the point on the said line nearest to such branch, and thence in a direct line to the same); thence down the middle of the said branch and of the said river, until it empties into the Rio Colorado; thence across the Rio Colorado, following the division line between Upper and Lower California, to the Pacific Ocean.

The southern and western limits of New Mexico, mentioned in this article, are those laid down in the map entitled "*Map of the United Mexican States, as Organized and defined by various Acts of the Congress of said Republic, and constructed according to the best Authorities. Revised edition. Published at New York, in* 1847, *by J. Disturnell.*" Of which map a copy is added to this treaty, bearing the signatures and

seals of the undersigned plenipotentiaries. And, in order to preclude all difficulty in tracing upon the ground the limit separating Upper from Lower California, it is agreed that the said limit shall consist of a straight line drawn from the middle of the Rio Gila, where it unites with the Colorado, to a point on the coast of the Pacific Ocean distant one marine league due south of the southernmost point of the port of San Diego, according to the plan of said port made in the year 1782 by Don Juan Pantoja second sailing-master of the Spanish fleet, and published at Madrid in the year 1802, in the Atlas to the voyage of the schooners *Sutil* and *Mexicana*, of which plan a copy is hereunto added, signed and sealed by the respective plenipotentiaries.

In order to designate the boundary line with due precision, upon authoritative maps, and to establish upon the ground landmarks which shall show the limits of both republics, as described in the present article, the two governments shall each appoint a commissioner and a surveyor, who, before the expiration of one year from the date of the exchange of ratifications of this treaty, shall meet at the port of San Diego, and proceed to run and mark the said boundary in its whole course to the mouth of the Rio Bravo del Norte. They shall keep journals and make out plans of their operations; and the result agreed upon by them shall be deemed a part of this treaty, and shall have the same force as if it were inserted therein. The two governments will amicably agree regarding what may be necessary to these persons, and also as to their respective escorts, should such be necessary.

The boundary line established by this article shall be religiously respected by each of the two republics, and no change shall ever be made therein, except by the express and free consent of both nations, lawfully given by the general government of each, in conformity with its own constitution.

ARTICLE VI.

The vessels and citizens of the United States shall, in all time, have a free and uninterrupted passage by the gulf of California, and by the river Colorado below its confluence with the Gila, to and from their possessions situated north of the boundary line defined in the preceding article; it being understood that this passage is to be by navigating the gulf of California and the river Colorado, and not by land, without the express consent of the Mexican government.

If, by the examinations which may be made, it should be ascertained to be practicable and advantageous to construct a road, canal, or railway, which should in whole or in part run upon the river Gila, or upon its right or its left bank, within the space of one marine league from either margin of the river, the governments of both republics will form an agreement regarding its construction, in order that it may serve equally for the use and advantage of both countries.

ARTICLE VII.

The river Gila, and the part of the Rio Bravo del Norte lying below the southern boundary of New Mexico, being, agreeably to the fifth article, divided in the middle between the two republics, the navigation of the Gila and of the Bravo below said boundary shall be free and common to the vessels and citizens of both countries; and neither shall, without the consent of the other, construct any work that may impede or interrupt, in whole or in part, the exercise of this right; not even for the purpose of favoring new methods of navigation. Nor shall any tax or contribution, under any denomination or title, be levied upon vessels, or persons navigating the same, or upon merchandise or effects transported thereon, except in the case of landing upon one of their shores. If, for the purpose of making the said rivers navigable, or for maintaining them in such state, it should be necessary or advantageous to establish any tax or contribution, this shall not be done without the consent of both governments.

The stipulations contained in the present article shall not impair the territorial rights of either republic within its established limits.

ARTICLE VIII.

Mexicans now established in territories previ usly belonging to Mexico, and which remain for the future within the limits of the United States, as defined by the present treaty, shall be free to continue where they now reside, or to remove at any time to the Mexican republic, retaining the property which they possess in the said territories, or disposing thereof, and removing the proceeds wherever they please, without their being subjected, on this account, to any contribut on, tax, or charge whatever.

Those who shall prefer to remain in the said territories, may either retain the title and rights of Mexican citizens, or acquire those of citizens of the United States. But they shall be under the obligation to make their election within one year from the date of the exchange of ratifications of this treaty; and those who shall remain in the said territories after the expiration of that year, without having declared their intention to retain the character of Mexicans, shall be considered to have elected to become citizens of the United States.

In the said territories, property of every kind, now belonging to Mexicans not established there, shall be inviolably respected. The present owners, the heirs of these, and all Mexicans who may hereafter acquire said property by contract, shall enjoy with respect to it, guarantees equally ample as if the same belonged to citizens of the United States.

ARTICLE IX.

The Mexicans who, in the territories aforesaid, shall not preserve the character of citizens of the Mexican republic, conformably with what is stipulated in the preceding article, shall be incorp rated into the union of the United States and be admitted at the proper time (to be judged of by the Congress of the United States) to the enjoyment of all the rights of citizens of the United States, according to the principles of the Constitution; and in the meantime shall be maintained and protected in the free enjoyment of their liberty and property, and secured in the free exercise of their religion without restriction.

ARTICLE X.

[Stricken out]

ARTICLE XI.

Considering that a great part of the territories which, by the present treaty, are to be comprehended for the future within the limits of the United States, is now occupied by savage tribes, who will hereafter be under the exclusive control of the government of the United States, and whose incursi ns within the territory of Mexico would be prejudicial in the extreme, it is solemnly agre d that all such incursions shall be forcibly restrained by the government of the United States whensoever this may be necessary; and that when they cannot be prevented, they sh ll be punished by the said government, and satisfaction for the same shall be exacted—all in the same way, and with equal diligence and energy, as if the same incursions were meditated or committed with'n its own territory, against its own citizens.

It shall not be lawful, under any pretext whatever, for any inhabitant of the United States to purchase or acquire any Mexican, or any foreigner residing in Mexico, who may have been captured by Indians inhabiting the territory of either of the two republics, nor to purchase or acquire horses, mules, cattle, or property of any kind, stolen within Mexican territory by such Indians.

And in the event of any person or persons, captured within Mexican territory by Indians, being carried into the territory of the United States, the government of the latter engages and binds itself, in the most solemn manner, so soon as it shall know of such captives being within its territory, and shall be able so to do, through the faithful exercise of its influence and power, to rescue them and return them to their country, or deliver them to the agent or representative of the Mexican government. The Mexican authorities will, as far as practicable, give to the government of the

United States notice of such captures; and its agent shall pay the expenses incurred in the maintenance and transmission of the rescued captives; who, in the meantime, shall be treated with the utmost hospitality by the American authorities at the place where they may be. But if the government of the United States, before receiving such notice from Mexico, should obtain intelligence, through any other channel, of the existence of Mexican captives within its territory, it will proceed forthwith to effect their release and delivery to the Mexican agent as above stipulated.

For the purpose of giving to these stipulations the fullest possible efficacy, thereby affording the security and redress demanded by their true spirit and intent, the government of the United States will now and hereafter pass, without unnecessary delay, and always vigilantly enforce, such laws as the nature of the subject may require. And finally, the sacredness of this obligation shall never be lost sight of by the said government when providing for the removal of the Indians from any portion of the said territories, or for its being settled by citizens of the United States; but on the contrary, special care shall then be taken not to place its Indian occupants under the necessity of seeking new homes, by committing those invasions which the United States have solemnly obliged themselves to restrain.

ARTICLE XII.

In consideration of the extension acquired by the boundaries of the United States, as defined in the fifth article of the present treaty, the government of the United States engages to pay to that of the Mexican republic the sum of fifteen millions of dollars.

Immediately after this treaty shall have been duly ratified by the government of the Mexican republic, the sum of three millions of dollars shall be paid to the said government by that of the United States, at the city of Mexico, in the gold or silver coin of Mexico. The remaining twelve millions of dollars shall be paid at the same place, and in the same coin, in annual instalments of three millions of dollars each, together with interest on the same at the rate of six per centum per annum. This interest shall begin to run upon the whole sum of twelve millions from the day of the ratification of the present treaty by the Mexican government, and the first of the instalments shall be paid at the expiration of one year from the same day. Together with each annual instalment, as it falls due, the whole interest accruing on such instalment from the beginning shall also be paid.

ARTICLE XIII.

The United States engage, moreover, to assume and pay to the claimants all the amounts now due them, and those hereafter to become due, by reason of the claims already liquidated and decided against the Mexican republic, under the conventions between the two republics severally concluded on the eleventh day of April, eighteen hundred and thirty-nine, and on the thirtieth day of January, eighteen hundred and forty-three: so that the Mexican republic shall be absolutely exempt, for the future, from all expense whatever on account of the said claims.

ARTICLE XIV.

The United States do furthermore discharge the Mexican republic from all claims of citizens of the United States, not heretofore decided against the Mexican government, which may have arisen previously to the date of the signature of this treaty; which discharge shall be final and perpetual, whether the said claims be rejected or be allowed by the board of commissioners provided for in the following article, and whatever shall be the total amount of those allowed.

ARTICLE XV.

The United States, exonerating Mexico from all demands on account of the claims of their citizens mentioned in the preceding article, and considering them entirely and for ever cancelled, whatever their amount may be, undertake to make satisfaction for the same, to an amount not exceeding three and one-quarter millions of dollars. To ascertain the validity and amount of those claims, a board of commissioners shall be established by the government of the United States, whose awards shall be final and conclusive: Provided, that in deciding upon the validity of each claim, the board shall be guided and governed by the principles and rules of decision prescribed by the first and fifth articles of the unratified convention, concluded at the city of Mexico on the twentieth day of November, one thousand eight hundred and forty-three; and in no case shall an award be made in favor of any claim not embraced by these principles and rules.

If, in the opinion of the said board of commissioners, or of the claimants, any books, records, or documents in the possession or power of the government of the Mexican republic, shall be deemed necessary to the just decision of any claim, the commissioners, or the claimants through them, shall, within such period as Congress may designate, make an application in writing for the same, addressed to the Mexican Minister for Foreign Affairs, to be transmitted by the Secretary of State of the United States; and the Mexican government engages, at the earliest possible moment after the receipt of such demand, to cause any of the books, records, or documents so specified, which shall be in their possession or power (or authenticated copies or extracts of the same), to be transmitted to the said Secretary of State, who shall immediately deliver them over to the said board of commissioners: Provided, that no such application shall be made by, or at the instance of, any claimant, until the facts which it is expected to prove by such books, records, or documents, shall have been stated under oath or affirmation.

ARTICLE XVI.

Each of the contracting parties reserves to itself the entire right to fortify whatever point within its territory it may judge proper so to fortify, for its security.

ARTICLE XVII.

The treaty of amity, commerce, and navigation, concluded at the city of Mexico on the fifth day of April, A.D. 1831, between the United States of America and the United Mexican States, except the additional article, and except so far as the stipulations of the said treaty may be incompatible with any stipulation contained in the present treaty, is hereby revived for the period of eight years from the day of the exchange of ratifications of this treaty, with the same force and virtue as if incorporated therein; it being understood that each of the contracting parties reserves to itself the right, at any time after the said period of eight years shall have expired, to terminate the same by giving one year's notice of such intention to the other party.

ARTICLE XVIII.

All supplies whatever for troops of the United States in Mexico, arriving at ports in the occupation of such troops previous to the final evacuation thereof, although subsequently to the restoration of the custom-houses at such ports, shall be entirely exempt from duties and charges of any kind; the government of the United States hereby engaging and pledging its faith to establish, and vigilantly to enforce, all possible guards for securing the revenue of Mexico, by preventing the importation, under cover of this stipulation, of any articles other than such, both in kind and in quantity, as shall really be wanted for the use and consumption of the forces of the United States during the time they may remain in Mexico. To this end, it shall be the duty

of all officers and agents of the United States to denounce to the Mexican authorities at the respective ports any attempts at a fraudulent abuse of this stipulation which they may know of or may have reason to suspect, and to give to such authorities all the aid in their power with regard thereto: and every such attempt, when duly proved and established by sentence of a competent tribunal, shall be punished by the confiscation of the property so attempted to be fraudulently introduced.

ARTICLE XIX.

With respect to all merchandise, effects, and property whatsoever, imported into ports of Mexico whilst in the occupation of the forces of the United States, whether by citizens of either republic or by citizens or subjects of any neutral nation, the following rules shall be observed:

1. All such merchandise, effects, and property, if imported previously to the restoration of the custom-houses to the Mexican authorities, as stipulated for in the third article of this treaty, shall be exempt from confiscation, although the importation of the same be prohibited by the Mexican tariff.

2. The same perfect exemption shall be enjoyed by all such merchandise, effects, and property, imported subsequently to the restoration of the custom-houses, and previously to the sixty days fixed in the following article for the coming into force of the Mexican tariff at such ports respectively; the said merchandise, effects, and property being, however, at the time of their importation, subject to the payment of duties, as provided for in the said following article.

3. All merchandise, effects, and property described in the two rules foregoing shall, during their continuance at the place of importation, and upon their leaving such place for the interior, be exempt from all duty, tax, or impost of every kind, under whatsoever title or denomination. Nor shall they be there subjected to any charge whatsoever upon the sale thereof.

4. All merchandise, effects, and property, described in the first and second rules, which shall have been removed to any place in the interior whilst such place was in the occupation of the forces of the United States, shall, during their continuance therein, be exempt from all tax upon the sale or consumption thereof, and from every kind of impost or contribution, under whatsoever title or denomination.

5. But if any merchandise, effects, or property, described in the first and second rules, shall be removed to any place not occupied at the time by the forces of the United States, they shall, upon their introduction into such place, or upon their sale or consumption there, be subject to the same duties which, under the Mexican laws, they would be required to pay in such cases if they had been imported in time of peace, through the maritime custom houses, and had there paid the duties conformably with the Mexican tariff.

6. The owners of all merchandise, effects, or property described in the first and second rules, and existing in any port of Mexico, shall have the right to reship the same, exempt from all tax, impost, or contribution whatever.

With respect to the metals, or other property, exported from any Mexican port whilst in the occupation of the forces of the United States, and previously to the restoration of the custom-house at such port, no person shall be required by the Mexican authorities, whether general or State, to pay any tax, duty, or contribution upon any such exportation, or in any manner to account for the same to the said authorities.

ARTICLE XX.

Through consideration for the interests of commerce generally, it is agreed, that if less than sixty days should elapse between the date of the signature of this treaty and the restoration of the custom-houses, conformably with the stipulation in the third article, in such case all merchandise, effects, and property whatsoever, arriving at the Mexican ports after the restoration of the said custom-houses, and previously to the expiration of sixty days after the day of the signature of this treaty, shall be admitted to entry; and no other duties shall be levied thereon than the duties established by the tariff found in force at such custom-houses at the time of the restoration of the

same. And to all such merchandise, effects, and property, the rules established by the preceding article shall apply.

ARTICLE XXI.

If unhappily any disagreement should hereafter arise between the governments of the two republics, whether with respect to the interpretation of any stipulation in this treaty, or with respect to any other particular concerning the political or commercial relations of the two nations, the said governments, in the name of those nations, do promise to each other that they will endeavor, in the most sincere and earnest manner, to settle the differences so arising, and to preserve the state of peace and friendship in which the two countries are now placing themselves; using, for this end, mutual representations and pacific negotiations. And if, by these means, they should not be enabled to come to an agreement, a resort shall not, on this account, be had to reprisals, aggression, or hostility of any kind, by the one republic against the other, until the government of that which deems itself aggrieved shall have maturely considered, in the spirit of peace and good-neighborship, whether it would not be better that such difference should be settled by the arbitration of commissioners appointed on each side, or by that of a friendly nation. And should such course be proposed by either party, it shall be acceded to by the other, unless deemed by it altogether incompatible with the nature of the difference, or the circumstances of the case.

ARTICLE XXII.

If (which is not to be expected, and which God forbid!) war should unhappily break out between the two republics, they do now, with a view to such calamity, solemnly pledge themselves to each other and to the world, to observe the following rules: absolutely, where the nature of the subject permits, and as closely as possible in all cases where such absolute observance shall be impossible:

1. The merchants of either republic then residing in the other shall be allowed to remain twelve months (for those dwelling in the interior), and six months (for those dwelling at the seaports), to collect their debts and settle their affairs; during which periods, they shall enjoy the same protection, and be on the same footing in all respects, as the citizens or subjects of the most friendly nations; and, at the expiration thereof, or at any time before, they shall have full liberty to depart, carrying off all their effects without molestation or hindrance: conforming therein to the same laws which the citizens or subjects of the most friendly nations are required to conform to. Upon the entrance of the armies of either nation into the territories of the other, women and children, ecclesiastics, scholars of every faculty, cultivators of the earth, merchants, artisans, manufacturers, and fishermen, unarmed and inhabiting unfortified towns, villages, or places, and in general all persons whose occupations are for the common subsistence and benefit of mankind, shall be allowed to continue their respective employments unmolested in their persons. Nor shall their houses or goods be burnt or otherwise destroyed, nor their cattle taken, nor their fields wasted, by the armed force into whose power, by the events of war, they may happen to fall; but if the necessity arise to take anything from them for the use of such armed force, the same shall be paid for at an equitable price. All churches, hospitals, schools, colleges, libraries, and other establishments for charitable and beneficent purposes, shall be respected, and all persons connected with the same protected in the discharge of their duties and the pursuit of their vocations.

2. In order that the fate of prisoners of war may be alleviated, all such practices as those of sending them into distant, inclement, or unwholesome districts, or crowding them into close and noxious places, shall be studiously avoided. They shall not be confined in dungeons, prison-ships, or prisons; nor be put in irons, nor bound, nor otherwise restrained in the use of their limbs. The officers shall enjoy liberty on their paroles, within convenient districts, and have comfortable quarters; and the common soldiers shall be disposed in cantonments, open and extensive enough for air and exercise, and lodged in barracks as roomy and as good as are provided by the party in whose power they are, for its own troops. But if any officer shall break his

parole by leaving the district so assigned him, or any other prisoner shall escape from the limits of his cantonment, after they shall have been designated to him, such individual, officer, or other prisoner, shall forfeit so much of the benefit of this article as provides for his liberty on parole or in cantonment. And if any officer so breaking his parole, or any common soldier so escaping from the limits assigned him, shall afterwards be found in arms, previously to his being regularly exchanged, the person so offending shall be dealt with according to the established laws of war. The officers shall be daily furnished by the party in whose power they are, with as many rations, and of the same articles, as are allowed, either in kind or by commutation, to officers of equal rank in its own army; and all others shall be daily furnished with such rations as is allowed to a common soldier in its own service: the value of all which supplies shall, at the close of the war, or at periods to be agreed upon between the respective commanders, be paid by the other party on a mutual adjustment of accounts for the subsistence of prisoners; and such accounts shall not be mingled with or set off against any others, nor the balance due on them be withheld, as a compensation or reprisal for any cause whatever, real or pretended. Each party shall be allowed to keep a commissary of prisoners appointed by itself, with every cantonment of prisoners in possession of the other; which commissary shall see the prisoners as often as he pleases; shall be allowed to receive, exempt from all duties or taxes, and to distribute, whatever comforts may be sent to them by their friends; and shall be free to transmit his reports in open letters to the party by whom he is employed.

And it is declared that neither the pretence that war dissolves all treaties, nor any other whatever, shall be considered as annulling or suspending the solemn covenant contained in this article. On the contrary, the state of war is precisely that for which it is provided; and during which its stipulations are to be as sacredly observed as the most acknowledged obligations under the law of nature or nations,

ARTICLE XXIII.

This treaty shall be ratified by the President of the United States of America, by and with the advice and consent of the Senate thereof; and by the President of the Mexican republic, with the previous approbation of its General Congress; and the ratifications shall be exchanged in the city of Washington, or at the seat of government of Mexico, in four months from the date of signature hereof, or sooner if practicable.

In faith whereof, we, the respective plenipotentiaries, have signed this treaty of peace, friendship, limits, and settlement; and have hereunto affixed our seals respectively. Done in quintuplicate, at the city of Guadalupe Hidalgo, on the second day of February, in the year of our Lord one thousand eight hundred and forty-eight.

N. P. TRIST, [L.S.]
LUIS G. CUEVAS, [L.S.]
BERNARDO COUTTO, [L.S.]
MIGL. ATRISTAIN. [L.S.]

And whereas the said treaty, as amended, has been duly ratified on both parts, and the respective ratifications of the same were exchanged at Querétaro on the thirtieth day of May last, by Ambrose H. Sevier and Nathan Clifford, Commissioners on the part of the Government of the United States, and by Señor Don Louis de la Rosa, Minister of Relations of the Mexican Republic, on the part of that Government:

NOW, therefore, be it known that I, JAMES K. POLK, President of the United States of America, have caused the said treaty to be made public, to the end that the same and every clause and article thereof may be observed and fulfilled with good faith by the United States and the citizens thereof.

In witness whereof, I have hereunto set my hand and caused the seal of the United States to be affixed.

Done at the City of Washington, this fourth day of July, one thousand eight hundred and forty-eight, and of the Independence of the United [L.S.] States the seventy-third.

By the President: JAMES K. POLK.

JAMES BUCHANAN, *Secretary of State.*

ARTICLES REFERRED TO IN THE FIFTEENTH ARTICLE OF THE PRECEDING TREATY.

First and Fifth Articles of the unratified Convention between the United States and the Mexican Republic of the 20th November, 1843.

ARTICLE I.

All claims of citizens of the Mexican Republic against the Government of the United States, which shall be presented in the manner and time hereinafter expressed, and all claims of citizens of the United States against the Government of the Mexican Republic, which, for whatever cause, were not submitted to, nor considered nor finally decided by, the commission, nor by the arbiter appointed by the convention of 1839, and which shall be presented in the manner and time hereinafter specified, shall be referred to four commissioners, who shall form a board, and shall be appointed in the following manner, that is to say: Two commissioners shall be appointed by the President of the Mexican Republic, and the other two by the President of the United States, with the approbation and consent of the Senate. The said commissioners, thus appointed, shall, in presence of each other, take an oath to examine and decide impartially the claims submitted to them, and which may lawfully be considered, according to the proofs which shall be presented, the principles of right and justice, the law of nations, and the treaties between the two republics.

ARTICLE V.

All claims of citizens of the United States against the Government of the Mexican Republic, which were considered by the commissioners, and referred to the umpire appointed under the convention of the 11th April, 1839, and which were not decided by him, shall be referred to, and decided by, the umpire to be appointed, as provided by this convention, on the points submitted to the umpire under the late convention, and his decision shall be final and conclusive. It is also agreed, that, if the respective commissioners shall deem it expedient, they may submit to the said arbiter new arguments upon the said claims.

THE GADSDEN TREATY.

Dated at the City of Mexico, 30th December, 1853.—*Ratified by the President U. S., 29th June*, 1854.—*Exchanged at Washington, 30th June*, 1854.—*Proclaimed by the President U. S*, 30*th June*, 1854.

BY THE PRESIDENT OF THE UNITED STATES OF AMERICA.—A PROCLAMATION.

Whereas, A treaty between the United States of America and the Mexican Republic was concluded and signed at the city of Mexico, on the thirtieth day of December, one thousand eight hundred and fifty-three; which treaty, as amended by the Senate of the United States, and being in the English and Spanish languages, is word for word as follows:

In the name of Almighty God:

The Republic of Mexico and the United States of America, desiring to remove every cause of disagreement which might interfere in any manner with the better friendship and intercourse between the two countries, and especially in respect to the true limits which should be established, when, notwithstanding what was covenanted in the treaty of Guadalupe Hidalgo in the year 1848, opposite interpretations have been urged, which might give occasion to questions of serious moment: to avoid

these, and to strengthen and more firmly maintain the peace which happily prevails between the two republics, the President of the United States has, for this purpose, appointed James Gadsden, envoy extraordinary and minister plenipotentiary of the same, near the Mexican government, and the President of Mexico has appointed as plenipotentiary "*ad hoc*" his Excellency Don Manuel Diez de Bonilla, Cavalier Grand Cross of the National and distinguished Order of Guadalupe, and Secretary of State, and of the office of Foreign Relations, and Don José Salazar Ylarregui and General Mariano Monterde, as scientific commissioners, invested with full powers for this negotiation, who, having communicated their respective full powers, and finding them in due and proper form, have agreed upon the articles following:

ARTICLE I.

The Mexican Republic agrees to designate the following as her true limits with the United States for the future: retaining the same dividing line between the two Californias as already defined and established, according to the 5th article of the Treaty of Guadalupe Hidalgo, the limits between the two republics shall be as follows: Beginning in the Gulf of Mexico, three leagues from land, opposite the mouth of the Rio Grande, as provided in the 5th article of the Treaty of Guadalupe Hidalgo; thence, as defined in the said article, up the middle of that river to the point where the parallel of 31° 47′ north latitude crosses the same; thence due west one hundred miles; thence south to the parallel of 31° 20′ north latitude; thence along the said parallel of 31° 20′ to the 111th meridian of longitude west of Greenwich; thence in a straight line to a point on the Colorado river twenty English miles below the junction of the Gila and Colorado rivers; thence up the middle of the said river Colorado until it intersects the present line between the United States and Mexico.

For the performance of this portion of the treaty, each of the two governments shall nominate one commissioner, to the end that, by common consent, the two thus nominated, having met in the city of Paso del Norte, three months after the exchange of the ratifications of this treaty, may proceed to survey and mark out upon the land the dividing line stipulated by this article, where it shall not have already been surveyed and established by the mixed commission, according to the treaty of Guadalupe, keeping a journal and making proper plans of their operations. For this purpose, if they should judge it necessary, the contracting parties shall be at liberty each to unite to its respective commissioner, scientific or other assistants, such as astronomers and surveyors, whose concurrence shall not be considered necessary for the settlement and ratification of a true line of division between the two republics; that line shall be alone established upon which the commissioners may fix, their consent in this particular being considered decisive and an integral part of this treaty, without necessity of ulterior ratification or approval, and without room for interpretation of any kind by either of the parties contracting.

The dividing line thus established shall, in all time, be faithfully respected by the two governments, without any variation therein, unless of the express and free consent of the two, given in conformity to the principles of the law of nations, and in accordance with the constitution of each country respectively.

In consequence, the stipulation in the 5th article of the treaty of Guadalupe upon the boundary line therein described is no longer of any force, wherein it may conflict with that here established, the said line being considered annulled and abolished wherever it may not coincide with the present, and in the same manner remaining in full force where in accordance with the same.

ARTICLE II.

The government of Mexico hereby releases the United States from all liability on account of the obligations contained in the eleventh article of the treaty of Guadalupe Hidalgo; and the said article and the thirty-third article of the treaty of amity, commerce, and navigation between the United States of America and the United Mexican States, concluded at Mexico on the fifth day of April, 1831, are hereby abrogated.

ARTICLE III.

In consideration of the foregoing stipulations, the government of the United States agrees to pay to the government of Mexico, in the city of New York, the sum of ten millions of dollars, of which seven millions shall be paid immediately upon the exchange of the ratifications of this treaty, and the remaining three millions as soon as the boundary line shall be surveyed, marked, and established.

ARTICLE IV.

The provisions of the 6th and 7th articles of the treaty of Guadalupe Hidalgo having been rendered nugatory, for the most part, by the cession of territory granted in the first article of this treaty, the said articles are hereby abrogated and annulled, and the provisions as herein expressed substituted therefor. The vessels and citizens of the United States shall, in all time, have free and uninterrupted passage through the Gulf of California, to and from their possessions situated north of the boundary line of the two countries. It being understood that this passage is to be by navigating the Gulf of California and the river Colorado, and not by land, without the express consent of the Mexican government; and precisely the same provisions, stipulations, and restrictions, in all respects, are hereby agreed upon and adopted, and shall be scrupulously observed and enforced by the two contracting governments in reference to the Rio Colorado, so far and for such distance as the middle of that river is made their common boundary line by the first article of this treaty.

The several provisions, stipulations, and restrictions contained in the 7th article of the treaty of Guadalupe Hidalgo shall remain in force only so far as regards the Rio Bravo del Norte, below the initial of the said boundary provided in the first article of this treaty; that is to say, below the intersection of the 31° 47′ 30″ parallel of latitude, with the boundary line established by the late treaty dividing said river from its mouth upwards, according to the 5th article of the Treaty of Guadalupe.

ARTICLE V.

All the provisions of the eighth and ninth, sixteenth and seventeenth articles of the Treaty of Guadalupe Hidalgo, shall apply to the territory ceded by the Mexican republic in the first article of the present treaty, and to all the rights of persons and property, both civil and ecclesiastical, within the same, as fully and as effectually as if the said articles were herein again recited and set forth.

ARTICLE VI.

No grants of land within the territory ceded by the first article of this treaty bearing date subsequent to the day—twenty-fifth of September—when the minister and subscriber to this treaty on the part of the United States proposed to the government of Mexico to terminate the question of boundary, will be considered valid or be recognised by the United States, or will any grants made previously be respected or be considered as obligatory which have not been located and duly recorded in the archives of Mexico.

ARTICLE VII.

Should there at any future period (which God forbid) occur any disagreement between the two nations which might lead to a rupture of their relations and reciprocal peace, they bind themselves in like manner to procure by every possible method the adjustment of every difference; and should they still in this manner not succeed, never will they proceed to a declaration of war, without having previously paid attention to what has been set forth in article twenty-one of the Treaty of Guadalupe for similar cases; which article, as well as the twenty-second, is here reaffirmed.

ARTICLE VIII.

The Mexican government having on the 5th of February, 1853, authorized the early construction of a plank and rail road across the isthmus of Tehuantepec, and to secure the stable benefits of said transit way to the persons and merchandise of the citizens of Mexico and the United States, it is stipulated that neither government will interpose any obstacle to the transit of persons and merchandise of both nations; and at no time shall higher charges be made on the transit of persons and property of citizens of the United States than may be made on the persons and property of other foreign nations, nor shall any interest in said transit way, nor in the proceeds thereof, be transferred to any foreign government.

The United States, by its agents, shall have the right to transport across the isthmus, in closed bags, the mails of the United States not intended for distribution along the line of communication; also the effects of the United States government and its citizens, which may be intended for transit, and not for distribution on the isthmus, free of custom-house or other charges by the Mexican government. Neither passports nor letters of security will be required of persons crossing the isthmus and not remaining in the country.

When the construction of the railroad shall be completed, the Mexican government agrees to open a port of entry in addition to the port of Vera Cruz, at or near the terminus of said road on the Gulf of Mexico.

The two governments will enter into arrangements for the prompt transit of troops and munitions of the United States, which that government may have occasion to send from one part of its territory to another, lying on opposite sides of the continent.

The Mexican government having agreed to protect with its whole power the prosecution, preservation, and security of the work, the United States may extend its protection as it shall judge wise to it when it may feel sanctioned and warranted by the public or international law.

ARTICLE IX.

This treaty shall be ratified, and the respective ratifications shall be exchanged at the city of Washington within the exact period of six months from the date of its signature, or sooner, if possible.

In testimony whereof, we, the plenipotentiaries of the contracting parties, have hereunto affixed our hands and seals at Mexico, the thirtieth (30th) day of December, in the year of our Lord one thousand eight hundred and fifty-three, in the thirty-third year of the independence of the Mexican Republic, and the seventy-eighth of that of the United States.

JAMES GADSDEN, [L.S.]
MANUEL DIEZ DE BONILLA, [L.S.]
JOSÉ SALAZAR YLARREGUI, [L.S.]
J. MARIANO MONTERDE. [L.S.]

And whereas the said treaty, as amended, has been duly ratified on both parts, and the respective ratifications of the same have this day been exchanged at Washington, by William L. Marcy, Secretary of State of the United States, and Señor General Don Juan N. Almonte, Envoy Extraordinary and Minister Plenipotentiary of the Mexican Republic, on the part of their respective governments:

Now, therefore, be it known that I, FRANKLIN PIERCE, President of the United States of America, have caused the said treaty to be made public, to the end that the same, and every clause and article thereof, may be observed and fulfilled with good faith by the United States and the citizens thereof.

In witness whereof, I have hereunto set my hand, and caused the seal of the United States to be affixed.

Done at the city of Washington, this thirtieth day of June, in the year of our Lord one thousand eight hundred and fifty-four, and of the Independence of the United States the seventy-eighth.

[L.S.]

FRANKLIN PIERCE.

By the President:
W. L. MARCY, *Secretary of State.*

EXTRADITION TREATY.

Signed at Mexico, December 11, 1861.—*Ratified by President of the United States, April* 1, 1862.—*Exchanged at Mexico, May* 20, 1862. *Proclaimed by President of the United States, June* 10, 1862.

BY THE PRESIDENT OF THE UNITED STATES OF AMERICA.—A PROCLAMATION.

Whereas, A treaty between the United States of America and the Republic of Mexico, for the extradition of criminals, was concluded and signed at the city of Mexico, on the 11th day of December, one thousand eight hundred and sixty-one, which treaty, as amended by the Senate of the United States, and being in the English and Spanish languages, is word for word as follows:

Treaty between the United States of America and the United Mexican States for the Extradition of Criminals.

The United States of America and the United Mexican States, having judged it expedient, with a view to the better administration of justice and to the prevention of crime within their respective territories and jurisdictions, that persons charged with the crimes hereinafter enumerated, and being fugitives from justice, should, under certain circumstances, be reciprocally delivered up, have resolved to conclude a treaty for this purpose, and have named as their respective plenipotentiaries, that is to say:

The President of the United States of America has appointed Thomas Corwin, a citizen of the United States, and their Envoy Extraordinary and Minister Plenipotentiary near the Mexican government; and the President of the United Mexican States has appointed Sebastian Lerdo de Tejada, a citizen of said States, and a deputy of the Congress of the Union, who, after having communicated to each other their respective full powers, found in good and due form, have agreed upon and concluded the following articles:

ARTICLE I.

It is agreed that the contracting parties shall, on requisitions made in their name, through the medium of their respective diplomatic agents, deliver up to justice persons who, being accused of the crimes enumerated in article third of the present treaty, committed within the jurisdiction of the requiring party, shall seek an asylum, or shall be found within the territories of the other: *Provided*, that this shall be done only when the fact of the commission of the crime shall be so established as that the laws of the country in which the fugitive or the person so accused shall be found, would justify his or her apprehension and commitment for trial if the crime had been there committed.

ARTICLE II.

In the case of crimes committed in the frontier States or Territories of the two contracting parties, requisitions may be made through their respective diplomatic agents, or through the chief civil authority of said States or Territories, or through such chief civil or judicial authority of the districts or counties bordering on the frontier as may for this purpose be duly authorized by the said chief civil authority of the said frontier States or Territories, or when, from any cause, the civil authority of such State or Territory shall be suspended, through the chief military officer in command of such State or Territory.

ARTICLE III.

Persons shall be so delivered up who shall be charged, according to the provisions of this treaty, with any of the following crimes, whether as principals, accessaries, or accomplices, to wit: Murder (including assassination, parricide, infanticide, and

poisoning); assault with intent to commit murder; mutilation, piracy, arson, rape, kidnapping, defining the same to be the taking and carrying away of a free person by force or deception; forgery, including the forging or making, or knowingly passing or putting in circulation counterfeit coin or bank notes, or other paper current as money, with intent to defraud any person or persons; the introduction or making of instruments for the fabrication of counterfeit coin or bank notes, or other paper current as money; embezzlement of public moneys; robbery, defining the same to be the felonious and forcible taking from the person of another of goods or money to any value, by violence or putting him in fear; burglary, defining the same to be breaking and entering into the house of another with intent to commit felony; and the crime of larceny of cattle, or other goods and chattels, of the value of twenty-five dollars or more, when the same is committed within the frontier States or Territories of the contracting parties.

ARTICLE IV.

On the part of each country the surrender of fugitives from justice shall be made only by the authority of the executive thereof, except in the case of crimes committed within the limits of the frontier States and Territories, in which latter case the surrender may be made by the chief civil authority thereof, or such chief civil or judicial authority of the districts or counties bordering on the frontier as may for this purpose be duly authorized by the said chief civil authority of the said frontier States or Territories; or if, from any cause, the civil authority of such State or Territory shall be suspended, then such surrender may be made by the chief military officer in command of such State or Territory.

ARTICLE V.

All expenses whatever of detention and delivery effected in virtue of the preceding provisions, shall be borne and defrayed by the Government or authority of the frontier State or Territory in whose name the requisition shall have been made.

ARTICLE VI.

The provisions of the present treaty shall not be applied in any manner to any crime or offence of a purely political character, nor shall it embrace the return of fugitive slaves, nor the delivery of criminals who, when the offence was committed, shall have been held in the place where the offence was committed in the condition of slaves, the same being expressly forbidden by the Constitution of Mexico; nor shall the provisions of the present treaty be applied in any manner to the crimes enumerated in the third article committed anterior to the date of the exchange of the ratifications hereof.

Neither of the contracting parties shall be bound to deliver up its own citizens under the stipulations of this treaty.

ARTICLE VII.

This treaty shall continue in force until it shall be abrogated by the contracting parties, or one of them; but it shall not be abrogated except by mutual consent, unless the party desiring to abrogate it shall give twelve months' previous notice.

ARTICLE VIII.

The present treaty shall be ratified in conformity with the constitutions of the two countries, and the ratifications shall be exchanged at the city of Mexico within six months from the date hereof, or earlier if possible.

In witness whereof, we, the Plenipotentiaries of the United States of America and of the United Mexican States, have signed and sealed these presents.

Done in the city of Mexico, on the eleventh day of December, in the year of our

Lord one thousand eight hundred and sixty-one, the eighty-sixth of the Independence of the United States of America, and the forty-first of that of the United Mexican States.

THOMAS CORWIN, [L.S.]
SEB'N TERDO DE TEJADA. [L.S.]

And whereas the said Treaty, as amended, has been duly ratified on both parts, and the respective ratifications of the same were exchanged in the city of Mexico on the twentieth ultimo:

Now, therefore, be it known that I, ABRAHAM LINCOLN, President of the United States of America, have caused the said treaty to be made public, to the end that the same and every clause and article thereof may be observed and fulfilled with good faith by the United States and the citizens thereof.

In witness whereof I have hereunto set my hand and caused the seal of the United States to be affixed.

Done at the city of Washington, this twentieth day of June, in the year of our Lord one thousand eight hundred and sixty-two, and of the Independence of the United States of America the eighty-sixth. [L.S.]

By the President: ABRAHAM LINCOLN.
WILLIAM H. SEWARD, *Secretary of State.*

POSTAL CONVENTION.

Signed at Mexico, December 11, 1861.—*Ratified by President of the United States, February* 17, 1862.—*Exchanged at Mexico, May* 20, 1862.—*Proclaimed by President of the United States, June* 20, 1862.

BY THE PRESIDENT OF THE UNITED STATES OF AMERICA.—A PROCLAMATION.

Whereas, A Postal Convention between the United States of America and the Republic of Mexico was concluded and signed at the city of Mexico on the eleventh day of December, one thousand eight hundred and sixty-one, which Convention, being in the English and Spanish languages, is word for word as follows:

Postal Convention between the United States of America and the United Mexican States.

The United States of America and the United Mexican States, being desirous of drawing more closely the friendly relations existing between the two countries, and of facilitating the prompt and regular transmission of correspondence between their respective territories, have resolved to conclude a Postal Convention, and have named as their plenipotentiaries, that is to say: the President of the United States of America has appointed Thomas Corwin, a citizen of the United States and their Envoy Extraordinary and Minister Plenipotentiary near the Mexican Government, and the President of the United Mexican States has appointed Sebastian Lerdo de Tejada, a citizen of the United States and a deputy of the Congress of the Union, who, after [illegible] their full powers, found in good and due [illegible]

ARTICLE

and upon all letters weighing more than half an ounce, an additional rate of seven cents for each additional half ounce or fraction thereof.

2. Upon every newspaper, daily or other, the rate of one cent.

3. Upon reviews or other periodical publications, printed pamphlets, or other printed matter, the rate of one cent for every ounce or fraction of an ounce weight.

The said newspapers, reviews, or other periodical publications, printed pamphlets, or other printed matter, shall be sent in narrow bands or covers, open at the sides or ends, so that they may be easily examined, subject to the laws and regulations of each country, respectively.

ARTICLE II.

There shall be charged by the post-office of the United States of America, upon all letters, newspapers, printed pamphlets, or other printed matter mailed in the United States and forwarded to Mexico by sea, whether by United States or by Mexican vessels, such rates of inland postage as are now or may hereafter be established by the laws of the United States, and the rate of sea postage prescribed in article first, which inland and sea postage shall be combined into one rate and paid always in advance.

Such prepayment shall be certified by the appropriate stamps of the United States post-office, and the postage so paid shall belong exclusively to the United States of America.

There shall be charged by the post-office of the United Mexican States upon all letters, newspapers, printed pamphlets, or other printed matter mailed in Mexico and forwarded to the United States of America by sea, whether by Mexican or by United States vessels, such rates of inland postage as are now or may hereafter be established by the laws of Mexico, and the rate of sea postage prescribed in article first, which inland and sea postage shall be combined into one rate and paid always in advance.

Such prepayment shall be certified by the appropriate stamps of the post-office of the United Mexican States, and the postage so paid shall belong exclusively to Mexico.

ARTICLE III.

Upon all letters, newspapers, printed pamphlets, or other printed matter received in the United States of America from Mexico by sea, there will be charged by the United States such rates of inland postage as are now, or may hereafter be, established by the laws of the United States, which shall be collected at the place of destination and shall belong exclusively to the United States of America, and *vice versa*, upon all letters, newspapers, printed pamphlets, or other printed matter received in Mexico from the United States of America by sea, there will be charged by Mexico such rates of inland postage as are now, or may hereafter be, established by the laws of Mexico, which shall be collected at the place of destination, and shall belong exclusively to Mexico.

ARTICLE IV.

All letters, newspapers, printed pamphlets, [illegible] United States of America [illegible] Mexico [illegible] transit, [illegible] free of [illegible] [illegible]

[illegible] present convention.

Mails for the United States of America shall be made up at regular intervals by the Mexican post-office, and dispatched to ports of the United States; and, in the same manner, mails for Mexico shall be made up at regular intervals by the United States post-office, and dispatched to ports in Mexico.

ARTICLE VII.

The United Mexican States engage to grant to the United States of America the transit, in closed mails, free from any postage, duties, imposts, detention, or examination whatever, through the United Mexican States, or any of their possessions or territories, of letters, newspapers, printed pamphlets, or other printed matter, forwarded from the United States of America, or any of their possessions or territories, to any other possession or territory of the United States of America, or to any foreign country, or from any foreign country, or possession or territory of the United States of America, to the United States of America, their possessions or territories.

A mail agent of the United States of America shall be permitted to accompany the closed mails in their transit.

The United States of America, on their part, engage to grant to the United Mexican States the transit, in closed mails, free from any postage, duties, imposts, detention, or examination whatever, through the United States of America, or any of their possessions or territories, of letters, newspapers, printed pamphlets, or other printed matter, forwarded from the United Mexican States, or any of their possessions or territories, to any other Mexican possession or territory, or to any foreign country, or from any foreign country, or Mexican possession or Territory, to the United Mexican States, their possessions or territories.

A mail agent of Mexico shall be permitted to accompany the closed mails in their transit.

ARTICLE VIII.

The means of making the transit of closed mails, under the stipulations of article seventh of the present convention, shall be arranged between the general post-office department of the two countries, subject to the approbation of each government, respectively.

ARTICLE IX.

In case of the misfortune of war between the two nations, the mail service of the two post-offices shall continue without impediment or molestation until six weeks after a notification shall have been made on the part of either of the two governments and delivered to the other, that the service is to be discontinued; and in such case the mail packets of the two countries shall be permitted to return freely, and under special protection, to their respective ports.

ARTICLE XI.

The present convention shall continue in force until it shall be terminated by the mutual consent of the two contracting parties, or until one of them shall have given to the other twelve months' previous notice of a desire to abrogate it.

ARTICLE XII.

This convention shall be ratified in conformity with the constitutions of the two countries, and the ratifications shall be exchanged at the city of Mexico within six months from the date hereof, or earlier if possible.

In witness whereof, we, the plenipotentiaries of the United States of America and of the United Mexican States, have signed and sealed these presents.

Done in the city of Mexico on the eleventh day of December, in the year of our Lord one thousand eight hundred and sixty-one, in the eighty-sixth year of the Independence of the United States of America, and in the forty-first of that of the United Mexican States.

THOMAS CORWIN, [L.S.]
SEB'N LERDO DE TEJADA. [L.S.]

And whereas the said convention has been duly ratified on both parts, and the respective ratifications of the same were exchanged in the city of Mexico on the twentieth ultimo:

Now, therefore, be it known that I, Abraham Lincoln, President of the United States of America, have caused the said convention to be made public, to the end that the same, and every clause and article thereof, may be observed and fulfilled by the United States and the citizens thereof.

In testimony whereof, I have hereunto set my hand, and caused the seal of the United States to be affixed.

Done at the city of Washington, this twentieth day of June, in the year of our Lord one thousand eight hundred and sixty-two, and of the Independence of the United States of America the eighty-sixth.

[L.S.]

ABRAHAM LINCOLN.

By the President:
WILLIAM H. SEWARD, *Secretary of State.*